

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1912~~ 1913

No. ~~1000~~ ~~1000~~ 8

JOANNA LITTLE, PLAINTIFF IN ERROR,

vs.

J. J. WILLIAMS, MARY E. BAKER, AND W. T. SUGG, AS
HEIRS-AT-LAW OF THE LATE E. G. SUGG, DECEASED,
ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED JUNE 2, 1910.

(22,210)



(22,210)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 310.

JOANNA LITTLE, PLAINTIFF IN ERROR,

vs.

J. J. WILLIAMS, MARY E. BAKER, AND W. T. SUGG, AS
HEIRS-AT-LAW OF THE LATE E. G. SUGG, DECEASED,
ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

INDEX.

	Original.	Print
Transcript from the chancery court of Mississippi county	1	1
Complaint	1	1
Bond for costs.....	5	3
Affidavit for warning order.....	6	3
Warning order.....	7	4
Appointment of guardian <i>ad litem</i>	8	4
Answer.....	9	5
Amended answer.....	14	8
Answer of guardian <i>ad litem</i>	19	11
Warning order and proof of publication.....	24	13
Confirmation notice.....	25	14
Proof of publication of confirmation notice.....	26	14
Summons issued and served.....	27	15
Summons issued and served.....	28	15
Appointment of guardian <i>ad litem</i>	29	15
Answer of guardian <i>ad litem</i> filed.....	30	15
Agreement of counsel as to facts.....	31	15
Deposition of W. H. Newsom.....	32	16
Exhibit A—Diagram.....	51	28

	Original	Print
Deposition of Chas. P. Buck.....	52	29
C. M. Buck.....	62	35
John R. Buck.....	77	44
James Hickman.....	94	54
Henry Paul.....	101	58
Deed from Levee Board to Joanna Little, March 11, 1903.....	113	65
Receipt to Joanna Little, March 9, 190-.....	115	66
Exceptions by defendants.....	116	67
Deposition of E. M. Huffman.....	117	67
George W. Buckner.....	124	71
J. T. Bracken.....	126	72
William Metzger.....	141	81
E. M. Huffman.....	145	83
Plat and explanations of sections 30, 31, and 32.....	154	88
Certificate of State land commissioner.....	155	89
Report of commissioners.....	157	90
Appointment of partitioners.....	167	96
Plat of township 15, range 12.....	171	98
Plat of township 16, range 12.....	172	98
Plat of township 15, range 13.....	173	98
Plat of township 16, range 13.....	174	98
Certificate of State land commissioner.....	175	99
Field notes of sections 1 and 2, township 15 north, range 12 east.....	177	99
Field notes of sections 25, 26, and 35, township 16 north, range 12 east.....	180	101
Field notes of sections 5 and 6, township 15 north, range 13 east.....	184	104
Field notes of sections 30, 31, and 32, township 16 north, range 13 east.....	186	105
Certificate of State land commissioner.....	190	107
Objections of plaintiff.....	191	108
Decree.....	192	108
Certificate of clerk.....	194	109
Appeal to Supreme Court.....	196	109
Motion to advance and affirm.....	197	110
Judgment.....	200	111
Opinion.....	201	112
Petition for rehearing.....	209	117
Petition for rehearing submitted.....	213	119
Petition for rehearing denied.....	214	120
Opinion on rehearing.....	215	120
Certificate of clerk.....	220	123
Assignment of errors and prayer for reversal.....	221	124
Petition for writ of error.....	224	126
Allowance of writ of error.....	229	128
Bond and approval.....	230	129
Writ of error.....	232	130
Certificate of judgment.....	234	131
Citation, with service.....	235	132
Return to writ of error.....	237	133
Map of Mississippi county, Arkansas.....	238	133

1 Mississippi County Chancery Court for the Chickasawba District, March Term, 1903.

JOANNA LITTLE, Plaintiff,
vs.

J. J. WILLIAMS, J. R. BAKER, UNKNOWN HEIRS of E. G. SUGG, S. J. Rogers, E. M. Huffman, I. H. Huffman, N. C. Williams, Ada Huffman, Mattie Cassidy, Cora Crockett, Unknown Heirs of E. G. Huffman, W. J. Barksdale, T. H. Hatfield, Mrs. Kate Butt, Herman Cross, Ida Cross, George Cross, and Edna Huffman, Floyd Huffman, Mervin Huffman, Defendants.

Complaint.

To the Honorable Ed D. Robertson, Chancellor for the 5th Chancery District of the State of Arkansas, presiding and holding a March Term of the Chancery Court for the Chickasawba District of Mississippi County:

Your petitioner, Joanna Little, would respectfully state and show unto your honor that she is the owner and in possession of the following described lands lying in the Chickasawba District of Mississippi County, Arkansas, to-wit:

The South $\frac{1}{2}$ of Section 25 except 19 acres on the North side, and all of Section 36, in Township 16 North, Range 12 East, also the West $\frac{1}{2}$ of Section 31 and the South East Quarter of Section 31 in Township 16 North Range 13 East.

And that she derived title thereto as follows: From the United States of America to the State of Arkansas by act of Congress of date Sep. 28th, 1850, donating to the State of Arkansas all swamp and overflowed lands within its borders for the purpose of reclaiming the same; from the State of Arkansas to the St. Francis

2 Levee District by act of the Legislature of date of March 29th, 1893, donating to said St. Francis Levee District all State lands, except the 16th sections, lying within its borders; from the St. Francis Levee Board to this petitioner by Deed of date of March 11th, 1903, which Deed is duly of record in Deed Record Volume 3, Page 76 of the Records for the Chickasawba District of Mississippi County, Arkansas; said Deed being hereto annexed marked "Exhibit A" and made a part of this petition.

II.

That said lands are in the actual possession of the petitioner, Joanna Little, and that there is no one in actual possession of any part of said lands claiming title thereto adverse to this petitioner.

III.

Petitioner states that the defendants, J. J. Williams, J. R. Baker, Unknown heirs of E. G. Sugg, S. J. Rogers, E. M. Huffman, I. H.

Huffman, N. C. Williams, Ada Huffman, Mattie Cassidy, Cora Crockett, Unknown heirs of E. G. Huffman, W. J. Barksdale, T. H. Hatfield, Mrs. Kate Butt, Herman Cross, Ida Cross and George Cross, claim to own said lands, and claim to have derived title thereto as follows: the defendant, J. J. Williams, owns 19 acres on the north side of the south $\frac{1}{2}$ of Sec. 25, T. 16, R. 12. J. R. Baker and the unknown heirs of E. G. Sugg own the S. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 25, T. 16 R. 12; S. J. Rogers owns the S. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 25 T. 16 R. 12; E. M. Huffman, I. H. Huffman, N. C. Williams, Ada Huffman, Mattie Cassidy, Cora Crockett and the unknown heirs of E. G. Huffman are the owners in common of the south $\frac{1}{2}$ of Sec. 30 and the fr. N. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of Sec. 31, all in T. 16, R. 13; T. H. Hatfield is the owner of the fr. N. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of Sec. 32, T. 16, R. 13; W. J. Barksdale is the owner of the fr. S. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 31, T. 16, R. 13; Mrs. Kate Butt, Herman Cross, Ida Cross and George Cross, heirs of George Cross, deceased, are the owners of the S. E. $\frac{1}{4}$ of Sec. 35, T. 16, R. 12 E.

That said defendants' lands, as above described, lie around and contiguous to the lands of this petitioner, and that these said defendants claim this petitioner's said lands to be a part of Walkers Lake, and, therefore accretion to their said lands.

IV.

That at the — term, 18—, of the Chancery Court for Mississippi County, Arkansas, in an action entitled "E. M. Huffman, et al. vs. J. H. Pike et al., a consent Decree was rendered partitioning and dividing this petitioner's said lands among these several defendants, and said court appointed commissioners to partition and divide said lands in pursuance of said decree. A certified copy of said decree and report of said commissioners being hereto annexed, marked "Exhibit—" "A" and "B" and made a part of this petition.

V.

Petitioner states that said decree is a cloud upon her title, and is void for the following reasons:

1st. Because this petitioner nor the St. Francis Levee Board, under whom she claims and who owned said lands at the time said suit was filed and said decree rendered, was not made a party to this suit nor served with process.

2nd. Because said decree was obtained by the fraud and collusion of all the parties thereto.

3rd. Because said decree is contrary to the law under the facts in this case; for the reason that said lands were never any part of Walkers Lake, or any other lake; but are and were at the time the said defendants' lands were surveyed, high lands, not covered by water, and susceptible of separate ownership.

4 Whereupon your petitioner prays that upon a final hearing of this cause said decree be cancelled, set aside and an-

nulled as a cloud upon this petitioner's title, and that this petitioner's title be quieted and confirmed, and for general relief.

LITTLE & BUCK.

C. M. Buck states that he is one of the Attorneys in the above entitled cause, and that the petitioner, Joanna Little, is absent and a non-resident of the State of Arkansas, and that the statements in the foregoing petition are true to the best of his knowledge and belief.

C. M. BUCK.

Subscribed and sworn to before me this 2 day of February, 1904.

5 In Mississippi County Chancery Court for the Chickasawba District, March Term, 1904.

JOANNA LITTLE, Plaintiff,

VS.

J. J. WILLIAMS et al., Defendants.

Bond.

We undertake that we will pay the defendants and the officers of this Court all costs that may accrue in this action either in this court or any other court to which it may be carried.

LITTLE LUMBER CO.,

By LITTLE & BUCK;

LITTLE LUMBER CO.,

P. B. LITTLE, *Per.*

JOANNA LITTLE,

By P. B. LITTLE.

6 In Mississippi County Chancery Court for the Chickasawba District to the March Term, 1904.

JOANNA LITTLE, Plaintiff,

VS.

J. J. WILLIAMS et al., Defendants.

Affidavit for Warning Order.

C. M. Buck states that he is one of the Attorneys in the above entitled cause, and that the plaintiff, Joanna Little, is absent and a non-resident of the State of Arkansas, and that the defendants J. J. Williams, Unknown heirs of E. G. Sugg, J. R. Baker, W. R. Barksdale, Cora Crockett, S. J. Rogers and Herman Cross are non-residents of the State of Arkansas.

CHURCHILL M. BUCK.

Subscribed and sworn to before me this 2 day of Feb'y, 1904.

J. W. RHODES, *Clerk.*

By W. A. FOWLER, *D. C.*

7 In Mississippi County Chancery Court for the Chickasawba District, to the March Term, 1904.

JOANNA LITTLE, Plaintiff,
vs.
J. J. WILLIAMS et al., Defendants.

Warning Order.

The defendants, J. J. Williams, Unknown heirs of E. G. Sugg, deceased, J. R. Baker, W. R. Barksdale, Cora Crockett, S. J. Rogers and Herman Cross are warned to appear in this court within 30 days and answer the complaint of the plaintiff Joanna Little. This February the 2nd, 1904.

J. W. RHODES, *Clerk*,
By W. A. FOWLER, *D. C.*

I, J. W. Rhodes, Clerk of the Chancery Court hereby appoint Armstrong & Gravette to represent the non-resident defendants, J. J. Williams, Unknown heirs of E. G. Sugg, J. R. Baker, W. R. Barksdale, Cora Crockett, S. J. Rogers and Herman Cross. This the 2nd day of February, 1904.

J. W. RHODES, *Clerk*,
By W. A. FOWLER, *D. C.*

Appointment accepted this — day of February, 1904.
ARMSTRONG & GRAVETTE.

8 JOANNA LITTLE, Plaintiff,
vs.

J. J. WILLIAMS et al., Defendants.

C. M. Buck states that he is one of the Attorneys in the above entitled cause; that the plaintiff Joanna Little is absent and a non-resident of the State of Arkansas, and that the defendants George Cross, Ida Cross, Edna Huffman, Floyd Huffman and Mervin Huffman are minors under the age of 21 years.

Subscribed and sworn to before me this 16th day of March, 1904.

J. W. RHODES, *Clerk*,
By W. A. FOWLER, *D. C.*

Appointment Guardian Ad Litem.

I, J. W. Rhodes, Clerk of the Chancery Court, hereby appoint A. D. Walton Guardian ad litem for the minor defendants.

J. W. RHODES, *Clerk*,
By W. A. FOWLER, *D. C.*

I, hereby accept the appointment as Guardian ad litem for the above named defendants.

9 In the Chancery Court of Mississippi County for Chickasawba
District, March Term, 1904.

JOANNA LITTLE, Plaintiff,

vs.

J. J. WILLIAMS, MARY E. BAKER, E. M. HUFFMAN et al.,
Defendants.

Answer.

Come the defendants Mary E. Baker and W. T. Sugg, as heirs at law of the late, E. G. Sugg, deceased, E. M. Huffman, J. H. Huffman, Mrs. M. C. Williams, Ada Huffman, Mattie Cassidy, and Cora Crockett, Edna Huffman, Floyd Huffman, & Marvin Huffman, as heirs at law of the late E. G. Huffman, deceased, Mrs. Kate Butt, Herman Cross, Ida Cross and George Cross, as widow and heirs at law of the late, George Cross, deceased, W. R. Barksdale; and S. J. Rogers; and for joint and several answer to plaintiff's complaint herein says:

I.

They deny that said plaintiff is the owner of, or in possession of, the lands sued for, to-wit: what would be the south half of section (25) and all of section (36), in township (16) north and range (12) east; and the west half of section (31) and the south east quarter of section (31), in township (16), north and range (13) east; Mississippi County, Arkansas, if surveyed and sectionized; or of any portion thereof.

They deny that said lands were ever granted by the United States Government to the State of Arkansas. Deny that they were ever donated by the State of Arkansas to the St. Francis Levee District. And defendants, say that, if the plaintiff holds any conveyance to said lands from the St. Francis Levee District, such conveyance is absolutely void and worthless, as the St. Francis Levee District never had any title of any kind or description to said lands.

II.

Defendants deny that the plaintiff is in possession of said lands.

III.

Defendants admit, as stated in the complaint, that they are and were the legal owners, by proper titles of the land lying around, bordering upon, and contiguous to, the shore or banks of what is known as Walker's Lake, respectively as follows:

Mary E. Baker and W. T. Sugg, as heirs at law of the late, E. G. Sugg, to the south west quarter of the north east quarter of section (25).

S. J. Rogers to the south east quarter of the north east quarter of said section (25).

E. M. Huffman, J. H. Huffman, Mrs. M. C. Williams, Ada Huffman, Katie Cassidy, and Cora Crockett, Edna Huffman, Floyd Huffman, and Mervin Huffman, as heirs at law of the late, E. M. Huffman to the east half of section (30), and the free north half of the north east quarter of section 31, and to the west half of the north west quarter of section 32, all in township 16, north and range 13 east.

W. R. Barksdale to the fractional south east quarter of the north east quarter of section 31, township 16 north range 13 east.

T. H. Hatfield to the north half of south west quarter of section 32 township 16 north range 13 east.

Katie Butt, Herman Cross, Ida Cross and George Cross, as widow and heirs at law of the late George Cross, to the south east quarter of section 35, township 16 north range 12 east.

And that defendants claim title to the lands sued for in this action by reason of said lands being a portion of the bottom of what was, once, a shallow, non-navigable lake, which has, since gone dry by the recession of the waters therefrom and by reason of their original lands as aforesaid, bordering upon the margin or banks of said lake, and lying contiguous to the lands so uncovered.

IV.

Defendants admit that said lands were partitioned out among them, respectively, in proportion to the frontage of their said riparian lands, by decree of the Chancery Court of Mississippi County, as alleged in the complaint.

V.

Defendants deny that said decree is cloud upon plaintiff's title for the reason that the plaintiff has no title, and never had any title. She was not made a party to said partition suit, because, at the time the same was instituted and determined, she had no interest in nor claim upon said lands. Nor was the St. Francis Levee District made a party to said suit, for the reason that it had no interest in nor title to said lands. Defendants deny that the decree in said partition suit was obtained through any fraud or collusion. Deny that said lands were never any part of Walker's Lake. Deny that they were not covered by water at the time defendants' original lands as aforesaid, were originally surveyed.

And for special and more specific answer, defendants say That, at the time said original lands of defendants, to wit, south west quarter of the north west quarter, and south east quarter of the north east quarter of section (25), and the south east quarter of section (35) all in township (16) north, and range (12) east, and the south half of section (30), free, north half of the south east quarter of section (31), and the south east quarter of the north east quarter of section (31) north half of the south west quarter of section (32) and the west half of the north west quarter of section (32), all in township (16) north and range (13) east were originally surveyed and platted by the United States

Government, said lands bordered and meandered on what was known as Walker's Lake, which was a shallow lake, not navigable and they were surveyed as fractional—the survey line extending only to the banks of said lake with the lake out in front of these lands remaining as unsurveyed territory. And, as thus surveyed and platted, said lands were donated to, and received by, the State of Arkansas, from the United States Government, under the "Swamp and overflowed Land Act of Congress of 1852." And, as thus surveyed and platted, said lands were, subsequently, sold and conveyed by the State of Arkansas to the defendants herein, and these under whom they held.

That, owing to the gradual and slow filling in and drying up of said lake, and of the gradual receding of the waters thereof, the lands in controversy, which were a portion of said lake, and unsurveyed and unplatted as aforesaid, became permanently high and dry much of them susceptible of cultivation and became joined on to the said riparian lands of the defendant. And that the said riparian lands of the defendants are so situated by bordering upon and meandering along the margin or banks of said lake, as to vest in the defendants, respectively, according to the extent of their lake frontage, the title to all the lands in controversy. And which have been partitioned out and set aside among the defendants, by said partition suit referred to in plaintiff's complaint.

Plaintiff sees for south half of section (25), and all of section (36), in township 16 north and range 12 east, and the west half and the south east quarter of section 34, in township 16 north and range 13 east. Defendants say there are no lands so known, as they have never been officially surveyed nor sectionized.

Wherefore defendants pray that said complaint be dismissed at plaintiff's cost.

S. S. SEMMES & G. D. THOMASSON,
ARMSTRONG & GRAVETTE,
DRIVER & HARRISON,

Attorneys for Defendants.

STATE OF ARKANSAS,
County of Mississippi.

S. J. Rogers one of the defendants in the above entitled cause, says that the statements contained in the above answer are true to the best of his information and belief.

S. J. ROGERS.

Subscribed and sworn to before me, this 14th day of March, A. D. 1904

J. W. RHODES, *Clerk.*
By W. A. FOWLER, *D. C.*

14 In the Chancery Court of Mississippi County for the Chickasawba District, March Term, 1904.

JOANNA LITTLE, Plaintiff,

vs.

J. J. WILLIAMS, MARY E. BAKER, W. T. SUGG, E. M. HUFFMAN,
and S. J. ROGERS et al., Defendants.

Amended and Substituted Answer.

Come the defendants, Mary E. Baker, and W. T. Sugg, as heirs at law of the late, E. G. Sugg, deceased; E. M. Huffman, J. H. Huffman, Mrs. M. C. Williams, Ada Huffman, Mattie Cassidy and Cora Crockett, as heirs at law of the late E. G. Huffman, deceased, Mrs. Kate Butt, as widow, and A. H. Cross, Ida Cross and George Cross as heirs at law of the late George Cross, deceased, S. J. Rogers, W. R. Barksdale, T. H. Hatfield, J. J. Williams and Mrs. Annie Hagan and for joint and several amended and substituted answer to plaintiff's complaint, herein, say:

They deny that the plaintiff is the owner, or in possession, of the lands sued for, to-wit: what would be the south half of section (25) and all of section (36) in township (16) north, and range (12) east; and the west half of section (31) and the south east quarter of section (31) in township (16) north and range (13) east, Mississippi County, Arkansas, if surveyed and sectionized, or of any portion thereof.

They deny that any such lands were ever specifically granted by the United States Government to the State of Arkansas. But say, that if the title to said lands which were submerged as part of the bottom of a non-navigable lake—passed from the United States Government to the State of Arkansas, under the Swamp and Overflow Act of Congress of September 1850; then the title to said

15 submerged lands, subsequently, passed from the State of Arkansas, to her respective vendees of the lands riparian to said submerged lands.

Defendants deny that the lands in controversy were ever donated to the St. Francis Levee District, by the State of Arkansas. Deny that the St. Francis Levee District ever had any title or interest in said lands. Deny that the plaintiff has any title to or interest in the said lands. And say that, if she has any deed of conveyance to said lands, said deed is absolutely null and void, for want of any title to or interest in said lands, in her grantor to convey.

II.

Defendants deny that the plaintiff is in actual possession of said lands.

III.

Defendants admit that they are claiming to be the owners of the lands in controversy; and that they base their claims of ownership

upon the fact that they are the respective owners of the following lands lying around, bordering upon and contiguous to the margin, shore, or bank, of what is known as Walker's Lake, to-wit:

J. J. Williams to the north part of the south west quarter of section (25) township (16) north, range (12) east.

Mary E. Baker and W. T. Sugg, as heirs at law of the late E. G. Sugg, to the south west quarter of the north east quarter of section (25) township (16) north, range (12) east.

S. J. Rogers to the south east quarter of the north east quarter of said section (25).

E. M. Huffman, J. H. Huffman, Mrs. M. C. Williams, Ada Huffman, Kate Cassidy and Cora Crockett, as heirs at law of the late E.

G. Huffman, to the south half of section (30) and the frac. 16 north half of the north east quarter of section (31) and to the west half of the north west quarter of section (32) all in township 16 north range 13 east.

W. R. Barksdale to the fractional south east quarter of the north east quarter of section (31) in township (16) north range (13) east.

Kate Butt, as widow, and A. H. Cross, Ida Cross and George Cross, as heirs at law of the late George Cross, deceased, to the south east quarter of section (35) in township (16) north range (12) east, and north west quarter of section (1) in township (15) north, range (12) east.

Defendants admit that their said lands, as above described, lie around and are contiguous to, the lands in controversy. And that they are claiming the lands in controversy because of the fact that said lands are a part of what was once, a shallow lake (Walker's Lake) since dried up—and that they are the owners of the original lands, as aforesaid, riparian thereto.

IV.

Defendants admit that the lands in controversy were partitioned out among them, respectively, in proportion to the frontage of their said riparian lands, by decree of the Chancery Court of Mississippi County, Arkansas, as alleged in the complaint.

V.

Defendants deny that said decree is — cloud upon the title of the plaintiff, for the reason that plaintiff has no title, and never had any title, to said lands. She was not made a party to said partition suit, because at the time the same was instituted and determined, she had no claim nor interest in said lands. Nor was the St. Francis Levee District made a party to said suit, for the reason that it had no interest in nor claim upon said lands. Defendants deny that the decree in said partition suit was obtained through any fraud or collusion. Deny that the lands in controversy were never any part of a lake. Deny, that, at the time the original lands owned by the defendants were surveyed by the United States Gov-

ernment, the lands in controversy were high lands, not covered by water, and were susceptible to separate ownership.

And for special and more specific answer the defendants say: That at the time said original lands of the defendants, to-wit:

N. Pt. S. W. $\frac{1}{4}$ section (25)

S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of section (25)

S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of section (25)

S. E. $\frac{1}{4}$ of section (35)

All in township (16) north and range (12) east. And South half of section (30)

Fr. N. E. $\frac{1}{4}$ of section (31)

W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of section (32)

All in township (16) north range (13) east; and

N. W. $\frac{1}{4}$ of section (1) township (15) north range (13) E. were originally surveyed and platted by the United States Government, said lands bordered upon and meandered around, a shallow, non-navigable lake of water, known as Walker's Lake. And, in surveying said lands, the survey lines extended only to the bank or margin of said lake, and no farther, and followed around the contour of said lake, with the meanderings of the margin or banks thereof. And that the water or lake, out in front of these lands, was never surveyed nor platted as land. That as thus surveyed, platted and described, said lands were donated to and received by the State of Arkansas from the United States Government, under the swamp and overflow act of Congress of September 1850. And, as thus surveyed, platted and described, said lands were, subsequently, upwards of fifty years ago, sold and conveyed by the State of Arkansas, to the various defendants, herein, and those under whom they hold.

18 That, owing to the gradual and slow filling in and drying up of said lake, and of the gradual receding of the water therefrom, the lands in controversy which were a portion of said lake, and unsurveyed and platted as aforesaid became permanently high and dry, (much of it susceptible of cultivation) and became joined on to and contiguous to the said riparian lands of the defendants.

Whereby, the title in and to the said uncovered lands, (the lands in controversy) became vested in the defendants, in proportion to the respective frontage upon said lake, of their riparian lands, as aforesaid. Which uncovered lands have been partitioned out among said defendants, under the Chancery proceedings referred to by plaintiff, in her complaint.

That, until quite recently, the St. Francis Levee District has never set up any title to nor claim upon any of the unsurveyed or lake lands, under its donation from the State of Arkansas. On the contrary, it has disclaimed any title to or interest therein, by assessing them, upon her tax books, to the respective riparian owners, and by collecting taxes upon them, and selling them for non-payment of taxes. All of which operates as an estoppel against said St. Francis Levee District in, subsequently, assuming ownership of said lands.

by attempting to convey them; even if it had ever had any title to or interest in said lands; which defendants deny.

Wherefore defendants pray that said complaint be dismissed at plaintiff's costs.

S. S. SEMMES & W. J. DRIVER,
ARMSTRONG & GRAVETTE,

Attorneys for Defendants.

19

Answer of Guardian ad Litem.

In the Mississippi County Chancery Court for the Chickasawba District, October Term, 1904.

JOANNA LITTLE, Plaintiff,

vs.

J. J. WILLIAMS et al., Defendants.

Comes R. A. Nelson heretofore appointed by the Court Guardian Ad Litem for the minor defendants, Ida Cross, George Cross, Edna Huffman, Floyd Huffman and Nervin Huffman, and for answer to so much of the complaint as affects said minor heirs set out and named, states:

I.

Denies that Joanna Little is the owner and in possession of the south half of section (25), except (19) acres on the north side and all of section (36) in township (16) north range (12) east, also the west half of section (31) and the south east quarter of section (31) in township (16) north range (13) east. And denies that she derives title thereto as follows: From the United States of America to the State of Arkansas by act of Congress of date September 28th 1850, donating to the State of Arkansas all swamp and overflowed lands within its borders for the purpose of reclaiming the same; from the State of Arkansas to the St. Francis Levee District by act of the Legislature of date of March 29th 1893, donating to said St. Francis Levee District all State lands, except the 16th section lying within its borders; from the St. Francis Levee Board to this petitioner by deed of date March 11th, 1903, which deed is duly of record in deed record Vol. 3, page 76 of the records for the Chickasawba District of Mississippi County, Arkansas.

20

II.

Denies that said lands are in the actual possession of the petitioner Joanna Little and that there is no one in actual possession of any part of said lands claiming title thereto adverse to the petitioner.

III.

Denies that defendants, J. J. Williams, J. R. Baker, Unknown heirs of E. G. Sugg, S. J. Rogers, E. M. Huffman, I. H. Huffman, M. C. Williams, Ada Huffman, Mattie Cassidy, Cora Crockett, Un-

known heirs of E. G. Huffman, W. J. Barksdale, T. H. Hatfield, Mrs. Kate Butt, Herman Cross, Ida Cross and George Cross claim to own said lands and claim to have derived title thereto as follows:

The defendant J. J. Williams owns 19 acres on the north side of the south half of section (25) township (16) north range (12) east.

IV.

J. R. Baker and the unknown heirs of E. G. Sugg own the south west quarter of the north east quarter of section (25) township (16) north range (12) east.

S. J. Rogers owns the south east quarter of the north east quarter of section (25) township (16) north range (12) east.

E. M. Huffman, I. H. Huffman, N. C. Williams, Ada Huffman, Mattie Cassidy, Cora Crockett and the unknown heirs of E. G. Huffman are the owners in common of the south half of section (30) and the frac. north half of the north east quarter of section (3) all in township (16) north range (13) east.

Denies T. H. Hatfield is the owner of the frac. north one half of south west quarter of section (32) township (16) range (13); Denies

21 W. J. Barksdale is the owner of the frac. south east quarter of the north east quarter of section (31) township (16) range (13); Denies that Mrs. Kate Butt, Herman Cross,

Ida Cross and George Cross are the owners of the south east quarter of section (35) township (16) range (12); Denies that said lands above described lie around and contiguous to the lands of petitioner, and that defendants claim this petitioner's lands to be a part of Walker's Lake.

V.

Denies that at the ——— term, 18— of the Chancery Court of Mississippi County, Arkansas, in an action entitled E. M. Huffman et al. v. J. H. Pike et al.; a consent decree was rendered partitioning and dividing petitioners said lands among these several defendants and said Court appointed commissioners to partition and divide said lands in pursuance of said decree.

VI.

Denies that said decree is a cloud upon petitioner's title and void for the following reason:

Because this petitioner nor the St. Francis Levee Board under whom petitioner claims and who owned said lands at the time said suit was filed and said decree rendered, was not made a party to this suit nor served with process.

Because said decree was obtained by the fraud and collusion of all the parties thereto.

Because said decree is contrary to the law under the facts in this case; for the reason that said lands was never any part of Walker's Lake, or any other lake; but are and were at the time the said defendants' lands were surveyed, high lands, not covered with or by water, and susceptible to separate ownership.

Wherefore the Guardian ad litem for the minor defendants as
aforesaid prays that said petition of said Joanna Little be dis-
missed, that defendants recover costs expended and for such
other and further relief as may be just and proper.

R. A. NELSON,
Guardian ad Litem.

JOANNA LITTLE, Plaintiff,
vs.
J. J. WILLIAMS et al., Defendants.

Comes Armstrong and Gravette Attorneys Ad Litem for the non-
resident defendants J. J. Williams, J. R. Baker, Mary E. Baker,
W. T. Sugg, Cora Crockett, W. R. Barksdale and S. J. Rogers and
beg leave to report that we have communicated with the defendants
mentioned and named and are informed by them and from an in-
vestigation of the files of the court that all said defendants have filed
their answer to said complaint and that all said parties have em-
ployed counsel to represent them in said cause.

Respectfully submitted.

ARMSTRONG & GRAVETTE.

Warning Order.

In the Chancery Court of Mississippi County, Arkansas, for the
Chickasawba District, March Term, 1904.

JOANNA LITTLE, Plaintiff,
vs.
J. J. WILLIAMS et al., Defendants.

The defendants J. J. Williams, Unknown heirs of E. G. Sugg,
J. R. Baker, W. J. Barksdale, Cora Crockett, S. J. Rogers and Her-
man Cross are warned to appear in this court within thirty days and
answer the complaint of the plaintiff Joanna Little.

Witness my hand and seal this February 2nd, 1904.

J. W. RHODES, *Clerk*,
By W. A. FOWLER, *D. C.*

Proof of Publication.

STATE OF ARKANSAS,
County of Mississippi:

H. C. Lawhorn, states on oath that he is Editor and publisher of
The Herald, a weekly newspaper, published in the town of Blythe-
ville, Mississippi County, Arkansas; that said paper has a bona fide
circulation in said County and State; that the annexed notice was
published for 4 weeks successively, as follows: The first publication
being on the 2nd day of February 1904, and the last on the 25th
day of February 1904.

H. C. LAWHORN,
Editor and Publisher.

Sworn to and subscribed before me this 28th of April, 1904.

W. D. GRAVETTE,

Notary Public.

Confirmation Notice.

Mississippi County Chancery Court, Chickasawba District, March Term, 1904.

JOANNA LITTLE, Petitioner, ex Parte.

Notice is hereby given that at the next March term, 1904 of the Chancery Court for the Chickasawba District, of Mississippi County, Arkansas, the petitioner Joanna Little, her petition having been filed in said court, will ask said court for a decree quieting and confirming her title to the following described lands, lying in the Chickasawba District of Mississippi County, Arkansas, to-wit: The S. $\frac{1}{2}$ of sec. 25, all of Sec. 36, Township 16 north, range 12 east, also the W. $\frac{1}{2}$ of sec. 31, and the S. E. $\frac{1}{4}$ of sec. 31, in township 16 north, range 13 east.

Now, therefore, all persons who can set up any right or claim to said lands, above described, or any part thereof, are hereby notified to appear in said court at its next March Term, 1904, and show cause why the said petitioner's title should not be confirmed.

Given under my hand and seal of office, this 7th day of January, 1904.

J. W. RHODES, *Clerk.*

By W. A. FOWLER, *D. C.*

Proof of Publication of the Confirmation Notice.

STATE OF ARKANSAS,

County of Mississippi;

Proof of Publication Notice.

H. C. Hall states on oath that he is one of the publishers of the Blytheville Courier, a weekly newspaper published in the town of Blytheville, Mississippi County, Arkansas; that said paper has a boni fide circulation in said county and State; that the annexed notice was published for six weeks successively, as follows: The first publication being on the 8th day of January 1904, and the last on the 12th day of February, 1904.

H. C. HALL,

One of the Publishers.

Sworn to before me this 2nd day of April, 1904.

J. H. EDWARDS, *N. P.*

27

Summons.

JOANNA LITTLE, Plaintiff,

vs.

J. J. WILLIAMS et al., Defendants.

On this 2nd day of February 1904 summons issued and served 11th day of February, 1904.

28

Summons.

JOANNA LITTLE, Plaintiff,

vs.

J. J. WILLIAMS et al., Defendants.

On this 10th day of October, 1904, summons issued and served October 21st, 1904.

29

Appointment Guardian ad Litem.

Mississippi County Chancery Court, Chickasawba District, October Term, 1904.

JOANNA LITTLE, Plaintiff,

vs.

J. J. WILLIAMS et al., Defendants.

On this day R. A. Nelson is appointed Guardian Ad Litem for the minor defendants Ida Cross, George Cross, Edna Huffman, Floyd Huffman and Mervin Huffman.

30

Answer Guardian ad Litem Filed.

Mississippi County Chancery Court, Chickasawba District, October Term, 1904.

JOANNA LITTLE, Plaintiff,

vs.

J. J. WILLIAMS et al., Defendants.

On this day the answer of the Guardian Ad-Litem is filed in this cause.

31

JOANNA LITTLE

vs.

J. J. WILLIAMS et al.

Agreement of Counsel.

In order to avoid labor and expense in taking testimony, it is agreed by counsel representing defendants, that all the surveyed

lands in the vicinity and locality of what would be S. $\frac{1}{2}$ of Sec. 25, the whole of Sec. 36, T. 16, R. 12 E., and N. W. $\frac{1}{4}$ and S. $\frac{1}{2}$ of Sec. 31, T. 16, R. 13 E., Mississippi County, Arkansas, if same were surveyed, were in September, 1850, swamp and overflowed lands, and passed to the State of Arkansas, under the grant of the United States, of date September 28, 1850, and that the Townships including Walker Lake as meandered on the map, were included by the Secretary of the Interior for the United States Government, in the list of lands prepared by him and forwarded by him to the Governor of Arkansas, showing the lands which passed to the State under the grant of 1850, and that said lands embraced in said list, were subsequently covered by patents from the Government of the United States.

And it is further agreed, that the State of Arkansas never undertook to convey the said lands embraced within the meandered lines of Walker's Lake, except as same might have passed by operation of law to the Defendants as riparian owners, prior to the land grant made by the State to the St. Francis Levee Board in 1893.

(Signed)

DRIVER & SEMMES,

Solicitors for Defendants.

32 The deposition of W. H. Newsom taken at the office of Henry Craft on this the fourth day of March, 1905, in the presence of Henry Craft and A. G. Little representing the complainant and W. J. Driver and S. S. Semmes representing the defendant Counsel having agreed to waive all formalities and all exceptions except for irrelevancy and incompetency and inadmissibility.

Deposition of W. H. Newsom.

Said witness W. H. Newsom being duly sworn deposed as follows:

Direct examination by Mr. CRAFT:

Q. 1. State your name age residence and occupation?

A. 1. W. H. Newsom, residence Wynne, Arkansas, occupation surveyor.

Q. 2. How long have you been in Arkansas and how long have you been occupied as a surveyor?

A. 2. About twenty-nine years I reckon, as a surveyor and I have lived in Arkansas since '54 with the exceptions of six years when I was in Louisiana.

Q. 3. In what portion of Arkansas have you lived?

A. 3. Cross County, and before Cross County was formed I lived in St. Francis. That was part of the St. Francis County at that time.

Q. 4. In what portion of the State have you been engaged as a surveyor?

A. 4. In the North Eastern portion of Crittenden, Poinsett, St. Francis and other counties.

Q. 5. What is the nature of the soil in these counties as between being hilly country and a Delta country?

A. 5. It is a river bottom country, the same as the Delta of Mississippi. It is level and overflow lands. That is all between Crawleys Ridge and the Mississippi River is that class of land. It all overflows prior to the building of the levees.

33 Q. 6. During the time you have been engaged as a surveyor have or not your duties required you to be in the woods and become familiar with the growth of timber in these counties?

A. 6. Yes sir.

Q. 7. What occasion have you had during your experience as a surveyor to examine timber and pass upon its quality, its variety and size, etc.?

A. 7. I have examined timber for mill firms many times and in order to make an estimate on lands to sell have inspected them for other people, and I have had to cut out Government corners very often to determine certainly whether they were proper corners or not.

Q. 8. During the time you have been a surveyor have you been called upon to perform this class of duty to a great or small extent?

A. 8. In surveying to a great extent, I have been at it for a long time and I have done a great deal of work in Mississippi bottom and in the country that is high and hilly also.

Q. 9. From your experience are you or not able to tell the varieties of timber and to judge with some degree of accuracy as to the age of the different varieties of timber from an inspection of the trees?

A. 9. Yes sir.

Q. 10. In this suit there is involved a controversy regarding certain lands in Mississippi County, State of Arkansas, more particularly described as the south $\frac{1}{2}$ of Sec. 25 and the whole of Sec. 36 in township 16 north, range 12 east. I will ask you whether or not you have made any examination of these lands and if so at whose request and when?

A. 10. Yes sir I made an examination of it on the 28 and 29 of November, 1901, at the request of the Little Lumber Company through their agent Mr. Henry Craft.

34 Q. 11. By that survey did you or not locate what is known as Walker's Lake?

A. 11. Yes sir on the north east portion of it, through section 36 especially, 16 North, Range 12 east.

Q. 12. Did or not you make a map or plat showing the location of Walker's Lake with reference to the lands hereinbefore described?

A. 12. Yes sir on that side.

Q. 13. I now hand you a drawing purporting to be a blue print of a map made by you for the purpose above stated and ask you to state whether or not this is a correct map, insofar as it undertakes to locate Walker's Lake and the sections of land hereinbefore mentioned?

A. 13. Yes sir.

Q. 14. Mark this map as Exhibit "A" to your deposition.

A. 14. I will do so.

Q. 15. This map as I understand you, correctly shows Walker's Lake as it existed at the time you made the survey, in November

1904 and shows where the various $\frac{1}{4}$ sections of land, above named, touched the lake, and it gives the distance from the various points shown on the map?

A. 15. Yes sir by scale.

Q. 16. What is meant by the dotted lines that appear upon this map, as distinguished from the solid lines?

A. 16. That is the part where the lines go into the lake, the line if extended out into the water, which was not surveyed.

Q. 17. In addition to the map which you have made and filed as an exhibit I will ask you what other surveys you made, if any, and for what purpose?

A. 17. We ran the level lines over the lines we surveyed in that lake.

Q. 18. What do you mean when you say that you ran the level lines?

A. 18. In order to ascertain the difference in altitude at the different points on the line—along the section lines that I ran and other lines.

Q. 19. The level lines as I understand you to give the topography of the country as distinguished from the out lines?

A. 19. Yes sir.

Q. 20. Examine the paper which I now hand you and state whether or not it is a map of drawing, prepared by you, showing the level lines, which you ascertained as the result of the survey which you made in November 1904?

A. 20. It is.

Q. 21. Will you please file this map as exhibit "B" to your deposition?

A. 21. I do so.

Q. 22. Explain that map sufficiently for the court to understand the basis on which it is made and for what purpose?

A. 22. For the purpose of ascertaining the difference in altitude of the land over which the lines were run. The datum line which we used is 100 feet above. That of course does not signify that this is just 100 feet above sea level but it saves time. We took 100 feet as the datum and then commenced. On exhibit "A" we commenced where it is marked 1 station "1" which is a fractional corner on the range line, between ranges 12 and 13, township 16 north, on the east boundary of section 25.

Q. 23. Now from that point proceed to show how you went?

A. 23. From that point we ran level lines south to station "2" marked on exhibit "A" from 2 to 3; from 3 to 4, and from 4 to 5 along the center line of sections 36 west. Thence south from 5 to 6 along the west boundary of 36 to the lake the water line No. 6 along the edge of the lake to station 7, marked on exhibit "A" which is the water line and shown in exhibit "B" from 6 to 7.

It shows the elevation and how it started and how it dips down and up. It describes the altitude, and from 7 to 8, and from station 8 to 3. Then commencing at station 8 I ran a level line to station 9 and 10, through section 31 east.

Q. 24. And you state that on this map which you filed as Exhibit

"B," there is correctly shown the level of the lands in controversy, as between any of the two given points marked on the map Exhibit "A"?

A. 24. Yes sir.

Q. 25. What do you find to be the character and size of the growth of the timber upon the south half of section 25?

A. 25. The south half of 25 there is a great deal of cypress on it. There was also Ash, Oak and Gum, and Hackberry and Elm. Those were the principal things. There may have been others. There was cottonwood there also and a great many stumps.

Q. 26. What was the size and growth of the timber which you found there and the various characters?

A. 26. On the south half of 25?

Q. 27. Yes sir.

A. 27. It ranged all the way from small timber in the forest up to 3½ to 4 feet in diameter.

Q. 28. What size cypress trees did you find on the south half of section 25?

A. 28. There were trees on there 3½ to 4 feet in diameter.

Q. 29. From your experience in such matters what would you say was the probable age of the cypress trees on that portion?

A. 29. Cypress timber is of very slow growth. It is the oldest timber we have in this country and it ranges up into the hundreds of years. I suppose there is some of these trees on that land that are three to four hundred years old.

Q. 30. What size elm and oak trees did you find upon this south half of 25?

37 A. 30. I noticed one oak in particular on the south ½ of 25 not very far from station 4. It was close to station 4 and it must have been 36 inches in diameter. It was fully 36 inches in diameter.

Q. 31. From your experience what would you say was the probable age of that tree?

A. 31. One hundred years or over.

Q. 32. Was there any large elm and hackberry?

A. 32. Hackberry doesn't grow very large. But there was hackberry on there ten inches in diameter at least.

Q. 33. What would you say as to its probable age?

A. 33. Hackberry that size on such land as that was at least one hundred years old or over.

Q. 34. What did you find as cottonwood—either from what you found growing or from the stumps which you found, evidencing the former existence of large trees?

A. 34. There was a great deal of large cottonwood on it. There was several stumps there to show where it had been cut off of that, that would range from 2 to 3½ feet in diameter.

Q. 35. On what portion of the south ½ of 25 did you find the cypress located?

A. 35. Most of it on the northern portion, and at the extreme western portion, and also on the east portion of it. Along the south line of 25 there wasn't a great deal of cypress.

Q. 36. As you go southward on the line between 30 and the south $\frac{1}{2}$ of 25 does the cypress grow less or more?

A. 36. It grows larger.

Q. 37. In number?

A. 37. Less in number of trees.

Q. 38. You have shown on your profile of level lines, a line going from point number 3, to point number 4, state whether or not you ascertained from your survey and examination what is the comparative level of the ground, running through the middle or center of the south $\frac{1}{2}$ of 25, which would be the north of the two level lines above referred to, as compared to it?

A. 38. It would be a little lower. It would be some lower than the line from here. The line through there would be slightly lower.

A. 39. That is to say as I understand you, that as you go from the northern portion of the south $\frac{1}{2}$ of section 25, southward, the level grows higher?

A. 39. Yes sir. That is higher at No. 4 than it would be in the center of 25.

Q. 40. Do you know how far you would have to proceed westward along the division line between 36 and 25 before you would reach the lake?

A. 40. Do you mean extending from station 5 how far it would be?

Q. 41. Yes sir.

A. 41. Along the west there it would be possibly a quarter of a mile or further than that, I didn't go out there. The land looked liked it was getting much swamper here. There is a rise beyond here and it drops down and there it is low and swampy there at 5.

Q. 42. From the profile line between points 3 and 4, as shown on Exhibit "B" the land seems to be lower at 3?

A. 42. Yes sir.

Q. 43. Is this cypress slash?

A. 43. It is cypress land, but it wasn't swampy at the time I ran it. It was dry there then.

Q. 44. If you followed this slash or swamp land southward, how far did it extend?

A. 44. Why only a very short distance. There was no wet land on that line from 8 to 3. It was all dry, though not level. There is a little sag in here.

Q. 45. Passing the north $\frac{1}{2}$ of 36, township 16, range 12 east I will ask you to state what you found to be the size and character of the growth of timber on the north east $\frac{1}{4}$ of 36?

A. 45. That was gum and ash and some cypress and hackberry, elm and cottonwood and some sweet gum and some oak.

Q. 46. Was there a heavy growth of timber or not on this land?

A. 46. Yes sir, comparatively a heavy growth. That is especially before any was cut out. There was a great deal of cottonwood on it.

Q. 47. State something in regard to the size of the timber on this land?

A. 47. The largest of it was three feet and a half I reckon—about three feet.

Q. 48. Of what varieties?

A. 48. The cottonwood was the largest. It ran about two feet. Hackberry ten inches—the largest was twelve, and elm twelve and gum twenty to twenty-four inches.

Q. 49. From the size of the timber that you found upon this $\frac{1}{4}$ section what would you say as to the age of the timber, the larger timber?

A. 49. The timber there with the exception of the cottonwood the largest timber was over one hundred years old, excluding cypress the cypress timber is older.

Q. 50. What do you find as to the growth of the timber and the size of same on the north west quarter of 36?

A. 50. On the east part of it is was elm, cottonwood and oak. Some oak and gum, and the western portion was mostly cypress and cottonwood. There was some cottonwood in the western part of it.

Q. 51. Give us some idea about that?

A. 51. The cypress timber in there is 15 and 18 inches in diameter, and some of it is twenty and some of it possibly twenty-four inches. The elm and ash are about the size of the other, eighteen inches.

Q. 52. What do you have to say in regard to the age of the timber on this quarter?

A. 52. All the oldest timber or the older timber is over one hundred years old on that land in there. Of the oldest timber there was the cypress and then the ash, and elm and hackberry. The cottonwood I can't say in that particular quarter whether that was over a hundred, but it was from forty to sixty years old.

Q. 53. Did you find any stumps that indicated that there had been large trees cut there?

A. 53. This large cottonwood cut all through there on the north half of 36.

Q. 54. What is the character of timber as to the variety and size on that portion of the S. E. $\frac{1}{4}$ of 36, which your map, Exhibit "A" shows to be above the lake?

A. 54. That was good large timber all on this quarter here now. That is gum and ash and cypress and some maple and oak. There is a great deal of gum and oak on there, especially along the lake ash 24 to 25 inches in diameter. There is sweet gum 24 inches here, especially at this lower end. Up here at this north-west part there is some cypress up here. The northwest quarter of that part is cypress and the eastern and middle part is ash, hackberry, elm, gum, oak and cottonwood.

Q. 55. State what was the result of your examination so far as concerns the growth of timber as to variety and size on the north-west quarter of Sec. 31, Township 16 Range 13 East?

A. 55. That was mostly cypress and cottonwood on that section and a good deal of ash. There was not a great deal of oak on that but there was some over-cup. There was considerable hackberry along in here and elm.

Q. 56. State as to the size of this timber on this $\frac{1}{4}$ section?

A. 56. On the western portion of it it runs up to 24 to 30 inches the largest of it, the ash and cottonwood, and there was some over-cup oak. There is a little hackberry.

Q. 57. From the size of the timber on this quarter section, state what, in your opinion is the age of the timber?

A. 57. The largest of it is over one hundred years old on that excluding the cypress, and the cypress timber is still older than that. As I said before cypress timber is the oldest timber we have in this country that I know anything about.

Q. 58. State what is the variety and size of the timber on the south half of section 31?

A. 58. That is ash, cottonwood, over-cup oak, that is the principal growth, and there is a little hackberry and occasionally an elm.

Q. 59. Go on and state the probable age of that timber?

A. 59. The oldest growth on there is over one hundred years old I know that.

Q. 60. Was there any evidence of large timber having been cut down on these quarter sections?

A. 60. Yes, sir, there was timber cut off of 31, from the center and along the lines on both sides.

Q. 61. As I understand from the profile of levels, as you go eastward, at the point we are now talking about, the ground gets higher?

A. 61. Yes, sir, it gets higher going back to station 10.

Q. 62. What have you to say in regard to the character of soil on these various quarter sections that we have been speaking about?

A. 62. Do you mean richness or productiveness or what?

Q. 63. The nature more than the fertility of it?

A. 63. This land along the lines that I ran through these sections and especially the south $\frac{1}{2}$ of 25 and the north $\frac{1}{2}$ of 36, 16 north, range 12 east is a black, sticky, waxy land. On the gradual ascent in 31, as you go eastward, the further you go the more sandy it gets. This is sandy land over here.

Q. 64. As you approach the Mississippi River towards the East you say the land becomes more sandy?

A. 64. Yes, sir.

Q. 65. Along the lake line as shown upon your map, Exhibit "A" you have marked a portion as being characterized by underbrush?

A. 65. Yes, sir.

Q. 66. Give some more particular description as to the variety of growth?

A. 66. It is swampy land there and it is cypress principally. There is a cypress growth in there with some willow.

Q. 67. How far out into the lake does this underbrush growth extend?

A. 67. Along the northwest quarter of 36 that undergrowth is from 75 to 100 yards wide, sorter going out into the swampy shallow water.

Q. 68. After you get beyond the lines of this underbrush what is the character of the lake as to the openness?

A. 68. It is open water out there, from the northwest quarter. Especially from the west portion of it, you can see the water out there from the lake through the underbrush. It is open water all along through here. This line between here and there is bush. It is cypress brush and some of it is old cypress I call scrubby cypress.

Q. 69. What indication did you find from your examination and surveys that the sections about which we have been talking were ever a part of the bed of Walker's Lake?

A. 69. Nothing to show that they were ever the bed of Walker's Lake. There was a cypress swamp along this line, cypress timber here which shows it was swampy land out there. There is nothing along here through the center of 36 and along there to show that it was ever swampy.

Q. 70. This lowness of the land on the north and east, where you say the cypress grows, indicates a slash or bed of the lake?

A. 70. It indicates a cypress swamp. It is an ordinary cypress swamp all along the meandering line up to here. It indicates a cypress swamp.

Q. 71. Now on that map which you have made Exhibit "A" you have marked a line which you call the United States Government survey meander line of Walker's Lake, is it along this line that you say the cypress brake or slash extends.

A. 71. Exists, yes, sir, on the south of that line the south and southwest. West of that line.

Q. 72. How wide is this cypress slash on an average?

A. 72. It extends for about a quarter, and then it begins to get above it gradual, slight elevation upwards from there on up to station 3 possibly a little over a quarter.

Q. 73. Do or not the timbers you have referred to, such as hackberry, oak, cottonwood, ash, grow in water, in the bed of a lake or are they what is known as high land timbers as distinguished from timbers that grow in the water?

A. 73. Cottonwood, hackberry, elm and oak grow on the high land. They will grow on low wet land but not in the water not in a lake.

Q. 74. Are such timbers such as you have mentioned, those which will grow where there is water standing any considerable portion of the year?

A. 74. No, sir, Cypress will grow in water where there is standing water that is shallow.

Q. 75. In running your lines did you find any Government corners on this meander line of Walker's Lake at any point?

A. 75. Yes, sir, I found one.

Q. 76. At what point did *did* you find this Government corner?

A. 76. I found a fractional corner on the east side of section 25, township 16 north range 12 east, where it is marked "1" on Exhibit "A."

Q. 77. Upon what sort of tree was this corner marked?

A. 77. I found a sweet gum at that point, that had the United States Deputy Surveyor's mark, plainly to be seen where it had been cut out.

Q. 78. What was the size of this tree?

A. 78. As given in the Government field notes in '47 it was 15 inches in diameter.

Q. 79. What do you find to be the present diameter of it?

A. 79. About twenty-four inches. Not exceeding twenty-five. That mark is near the ground. Probably that high, about a foot and a half.

Q. 80. When was this Government survey made?

A. 80. The United States field notes state it was made in 1847.

Q. 81. Have you had occasion, during your career as a surveyor to frequently cut out these old Government marks made as far back as 1847?

A. 81. Yes, sir, and much farther back.

Q. 82. How much will a tree of ordinary growth grow from 1847 until the present time, judging from the depth of those marks upon the surface of that tree?

A. 82. I find on small leaf elm it is very shallow; on red oak or spanish oak or bottom red oak it is very deep. On gum it is only ordinary. A gum tree generally goes in $3\frac{1}{2}$ to 5 inches deep in that length of time. Black gum is about the same. Elm is much slower than either of them. I have found where they have been in there since 1823 and '4, and they were not over an inch and a half deep. In the Spanish oak it would be ten or twelve inches deep, and sweet gum right by it not over three inches marked at the same time. Elm is generally very shallow especially small

45 leaf elm. Regular swamp elm is sometimes as much as six inches. I have cut different marks that was made as far back as 1815 on the 15th meridian line of this State. Cypress is very slow. I cut them out all the way from two inches—an inch and three quarter up to four inches deep—four to five. I don't think I have ever cut out any cypress over five inches. Five and a half at the outside, if that deep perhaps.

Q. 83. What did you learn about the growth of these timbers from the depth of those marks from the surface?

A. 83. I have learned that cypress and elm and hackberry are very slow growths. Sweet gum isn't a very fast growth. Red oak is very fast and cottonwood is much faster than any of it, but cypress is the slowest growth of timber we have.

Q. 84. This tree bearing the Government mark 1847, according to the field notes is located as you say, near station "41" or at station "1" on exhibit "A." Did you find timber on this unsurveyed land, showing an older age and larger growth than this tree bearing the Government mark?

A. 84. Yes, sir, I found Gum and Ash and Cottonwood.

Q. 85. Did you find timber of the same species on each and every quarter section of this land as old as it was here and as large or larger?

A. 85. Yes, sir, I don't think there is any of it any quarter of it

but has gum on it as large as that gum. Now in some places it is thicker than this, and ash and cottonwood that is much larger and cypress as large or larger.

Cross-examination by Capt. S. S. SEMMES:

Q. 1. Did you ever see Walker's Lake until you went up there in November to make this survey?

A. 1. Yes, sir.

Q. 2. When.

A. 2. It has been two or three years ago.

Q. 3. Did you make a survey of it when you rode over it two or three years ago?

A. 3. No, sir, I just rode over and examined the land and timber and made a report to the St. Francis Levee Board concerning the same.

Q. 4. You know nothing about the condition of the lake except from what you ascertained from the survey you made in November, do you?

A. 4. No, sir.

Q. 5. You have stated about the growth of the timber upon certain portions of the lake, in controversy. Please state how much of the land in the south half of 25 has a growth of timber, cottonwood, oak and ash and elm on it? How many acres?

A. 5. I could only estimate that.

Q. 6. And that is what you went there for?

A. 6. I would have had to run lines every twenty yards in there.

Q. 7. How much cottonwood, oak, ash and elm timber did you find on the south $\frac{1}{2}$ of 25 in acreage?

A. 7. I can't say just how many acres of that kind of timber, but as far as I could see nearly all north of this line on the south boundary of 25 was that class of timber until I got to the west edge of it, and then it began to be cypress.

Q. 8. Estimate the acres?

A. 8. I could estimate so far as I could see. I don't know how much farther it went as far as I could.

Q. 9. Did you survey and examine the whole of the S. $\frac{1}{2}$ of 25 and 36 to ascertain the character of the growth of timber on it?

A. 9. Only on the lines designated by the numbers.

Q. 10. Then your inference as to the quantity of the timber on the land in the south half of 25 and 36 is drawn from the timber on the edges?

A. 10. As far as I could see.

Q. 11. Do you know what was in the center of those lines?

A. 11. It was open country. I don't know what was beyond where I could see.

Q. 12. Isn't it a fact that starting up here at the southwest quarter of the northwest quarter of 25, and following the meander line as made by the United States Government Survey in 1847 all around the north and east bank as it meanders, there is a low, flat stretch of swampy country around there?

A. 12. I don't catch the question exactly.

Q. 13. Isn't it a fact that starting at the southwest corner of the northwest quarter of 25 and following the meander line, running north, and then southeast, as mentioned by the United States Government, defining Walker's Lake, there is a low flat stretch of country running along there?

A. 13. There is swampy cypress timber all around there.

Q. 14. Indicating that it may *be* at one time have been the arm of the lake?

A. 14. It don't show that there was any lake there. It was a cypress brake.

Q. 15. Then you would draw an inference that this land that you spoke of as being timbered with high land growth at the south $\frac{1}{2}$ of 25 and in 36 would be cut off from the line north of the meander line, by this swamp country, so that in the event that had been at one time under water this would be an island in here?

A. 15. There is water around here now in right wet weather while over here it is dry.

Q. 16. As a matter of fact during the rainy weather there is water in between the meander line on the north and—

A. 16. There is water right in here at the wet season. I don't know that it is rain. I rode across there once on horse back
48 several years ago and there was water in there then, probably in places that deep in the cypress brake a foot deep.

Q. 17. This plat which is filed as an exhibit to your deposition and upon which you have been examined simply shows the present location of Walker's Lake?

A. 17. It shows the present location and it shows the meander lines as made by the United States Government in 1847, and this shows the water line at this date.

Q. 18. How much of the land in the west half of 31 is high land and how much low land?

A. 18. That I can't tell you exactly because it is all uneven.

Q. 19. Proportionately?

A. 19. Proportionately I would judge about. I suppose I would estimate about two thirds of it high land.

Q. 20. What do you call high land?

A. 20. Land that is above the water. That is dry land, with the gum and ash.

Q. 21. That is all dry land now comparatively isn't it, except that land there? It is all comparatively dry now?

A. 21. You can tell wet land from dry land by the growth of timber on it.

Q. 22. Do you mean to say that the bulk of that land around there is land that was above water during the overflow of the Mississippi River?

A. 22. No, sir, not a foot of it all over that country.

Q. 23. Don't you know it to be a fact that during the overflow of the Mississippi River all this country around there was under water?

A. 23. Yes, sir, and the land all around there.

Q. 24. Isn't it also a well established geological fact that the whole

Mississippi was at one time a part of the Gulf of Mexico, and
49 has since filled in?

A. 24. Yes, sir.

Q. 25. And when the waters of the Mississippi made deposits of alluvial soil it built up the land of the Mississippi bottom?

A. 25. Yes, sir.

Q. 26. And are not the high lands and the low lands in the Mississippi bottom a part of the deposits of the Mississippi River, and isn't it a fact that high lands all through the Mississippi bottom are made by the Mississippi River which throws up sediments and makes deposits on these lands?

A. 26. It is made by water in the course of time these deposits coming down from the upper rivers and mountain streams.

Q. 27. And isn't it also a fact that owing to the eccentricities of the Mississippi River, time has affected or affects the river and makes it change so that it is almost impossible to identify it as compared to what it was a year before?

A. 27. In some places it does.

Q. 28. It is a fact that holes has been dug out that you could sink the City of Memphis in?

A. 28. Yes, sir.

Q. 29. I show you a map which is certified to by the land commissioner, as being a plat of the original survey made of Walker's Lake, and will ask you if, according to that plat if there is now any water lying northwest of a line starting say at the southwest corner of the northwest quarter of Sec. 30 and running west until you strike the S. W. corner of Sec. 36, whether there is any water north west of that line now?

A. 29. I can't say.

Q. 30. Did you survey beyond that?

A. 30. You mean from here?

Q. 31. Starting here?

50 A. 31. Starting at the S. W. corner of the N. W. $\frac{1}{4}$ of 30 and running diagonally until you cross the S. W. corner of 36, whether there is now any water lying N. W. of that line, I can't say whether there was or not. At the time I surveyed it there was none.

Q. 32. You ran a line to the south half of 25?

A. 32. Yes, sir.

Q. 33. The south $\frac{1}{2}$ of 25 would be west of that line?

A. 33. Yes, sir, it would be west of it.

Q. 34. There is no water at all in there now is there?

A. 34. I can't say, I haven't been there since the 20th of November.

Q. 35. That day then?

A. 35. There was none in there then.

Q. 36. Then the lake as it is defined on the southwest portion of this old survey is made by the United States Government?

A. 36. I didn't go across here.

Q. 37. Here is the line (indicating on the map) Did you find any water north of that line?

A. 37. These lines?

Q. 38. Is there any water up there?

A. 38. I didn't go up there and I didn't see whether there was any or not.

Q. 39. In that survey did you stumble across a mound known as the Petigo mound?

A. 39. Not that I know of I didn't see any mound. I didn't see any mound nothing more than just the ordinary difference in the altitude of the land up there.

And further deponent saith not.

Signature of the witness waived.

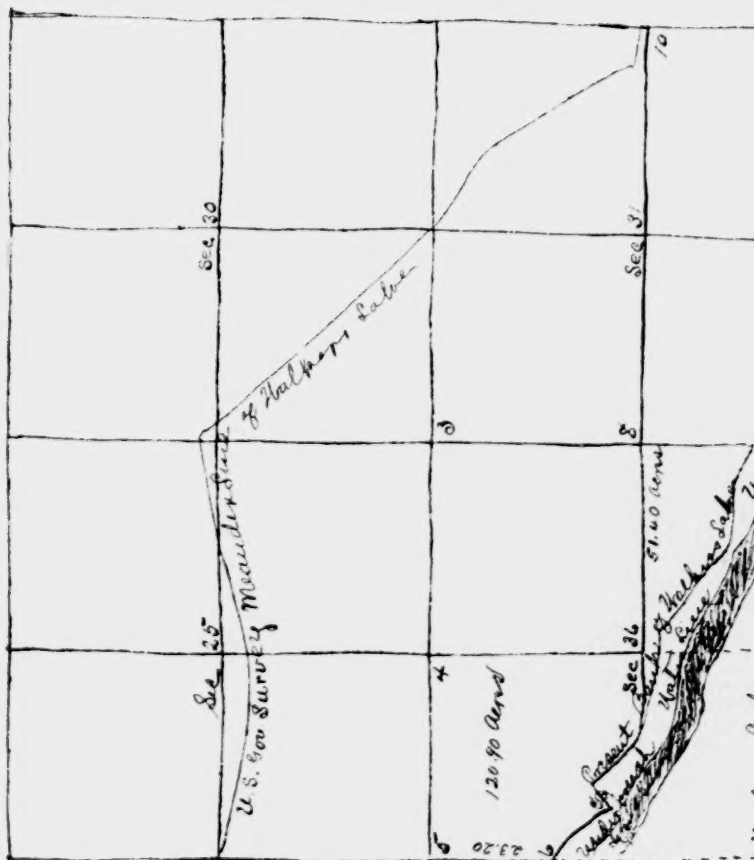
(Here follows diagram marked page 51)

Exhibit "A" to Newsoms Dep.

Map of Sections 25 and 36 T.16. N.R.2 E. Sections 30 and 31 T.16 N.R. 3 E. showing the unsurveyed land lying between the governmental meander line and the lake proper. Surveyed Nov. 28, 29, 1904.

By W. Hand. W.S. Newsom

Scale, $2\frac{1}{2}$ inches to mile.





Q

Q

Q

Q

of

Q

Q

Q

sou

Q

surv

Q

312

Q

it a

Q

A

was

Q

& 3

A

fifty

Q

betw

A

Q

tion

Q

run

A

Q

by t

sissi

A

Q

A

It is

low

Q

loan

Deposition of Chas. P. Buck.

CHARLES P. BUCK being sworn deposeth as follows:

Q. 1. State your name, age and residence?

A. 1. Chas. P. Buck, age 69, residence Huffman, Arkansas.

Q. 2. How long have you lived in Mississippi County, Arkansas?

A. 2. Twenty-five years in March, this year.

Q. 3. During all this time have you lived in and near the town of Huffman in this County and State?

A. 3. I have, except one year, 1886.

Q. 4. Are you familiar with the location of Walker's Lake?

A. 4. I think so sir, I have known it ever since I came here.

Q. 5. Are you familiar with the lands in Section 36 and the south half of section 25, in T. 16, N. R. 12 E.?

A. 5. I am, sir.

Q. 6. Do you know where the meander line as run in the original survey made in 1847 passed through and across these lands?

A. 6. I know all the meander line across sections 25 & 36.

Q. 7. Do you know where the meander line runs across section 31?

A. 7. I know about where it is, but I am not as familiar with it as I am with the other.

Q. 8. When did you first become familiar with Walker's Lake?

A. 8. When I first came here in 1880. I hunted over it and was familiar with it.

Q. 9. Where was the shore line of Walker's Lake in sections 25 & 36 as compared with its present location?

A. 9. I don't think the shore line of the lake proper has changed fifty yards since I came here.

Q. 10. What is the character of lands in section- 25 & 36 lying between the original meander line and banks of Walker's Lake?

A. 10. I would say intervening swamps and ridges.

Q. 11. What portion of the land lying between the points mentioned is ridge land?

53 A. 11. I could hardly answer as to what portion was high ridge lands and what was cypress. A very considerable portion is high land covered with large timber.

Q. 12. What is the character of timber that grows upon the ridges running through these sections?

A. 12. Large Cottonwood, Ash, Elm, Hackberry and Maple.

Q. 18. Are you familiar with the character of soil that is made by the gradual deposits of sediment from the overflows of the Mississippi River?

A. 13. I think I am sir.

Q. 14. State what the character of that soil is?

A. 14. I hardly know what scientific term to apply to the soil. It is alluvial soil, somewhat different on ridges to what it is in the low lands.

Q. 15. I will ask you if it is not what we would term a sandy loam?

Counsel for the defendants object to the form of the question.

A. 15. That is what it would be termed.

Q. 16. Have you ever observed a deposit of soil by the overflows of the Mississippi River, that is what we would term Gumbo?

A. 16. Not over the land. I have observed it on bars, but not over land.

Q. 17. Are you familiar with the character of soil that composes the land lying between the meander line above mentioned and the shore line of Walker's Lake?

A. 17. Yes sir.

Q. 18. What is the character of that soil?

A. 18. It is a black loamy sediment soil, created by the gradual deposits of the Mississippi River.

Q. 19. Are you familiar with the road that was cut by Tom Musgrave in 1886, running from section 32 west across section 54 36 to Walker's Lake?

A. 19. Yes sir, I was familiar with it.

Q. 20. What kind of banks did Walker's Lake have at the point where this road touched the lake, with reference to it being high and well defined or being low and flat?

A. 20. Where that road struck the lake the banks were comparatively high and well defined.

Q. 21. Was there or was there not large cottonwood timber standing immediately upon the bank around and near the point where this road touched the lake?

A. 21. There is one very large cottonwood standing immediately upon the bank where that road struck the lake. Just back of that was probably a few hundred yards there was a heavy growth of cottonwood timber.

Q. 22. Following around the meander line through sections 26 & 25 what is the character of lands immediately west of this meander line?

A. 22. Immediately west of this line there is a low sag or swamp or arm of the lake.

Q. 23. Are you acquainted with the present dimensions of this lake?

A. 23. I would say probably two and one half miles in length running from east to west and about one half mile in width.

Q. 24. Did it run in a straight line or a crescent shape?

A. 24. It was not a perfect crescent the greatest angle is at the lower end.

Q. 25. You are familiar with the out-lines of Walker's Lake as shown by the maps of Mississippi County in present use?

A. 25. Yes, especially the map published by Bowman.

Q. 26. What part of the area covered by Walker's Lake as shown by that map is really covered by Walker's Lake? I mean as to location and not area?

55 A. 26. Walker's Lake, as I know it, is along the western line of the lake as shown by the old maps.

Q. 27. Does it follow the western line the whole length?

A. 27. I think it does. The western banks are high.

Q. 28. Does the lake extend as far east as the old map shows it extend?

A. 28. No sir it does not by something like two miles.

Q. 30. Do you mean to say starting from the S. E. corner of section 32 and going due west that you would go two miles before you would strike Walker's Lake? and if so how do you know this to be true?

A. 30. I would say that from the S. E. corner of section 32 it would be two miles at least to the banks of the lake. I know it must be something like two miles for I have had occasion to travel over the land for the purpose of estimating the distance.

Q. 31. State whether or not any of Sec. 31 or 32 is in Walker's Lake as you know it?

A. 31. There is none. There is a high ridge between the lake and those sections.

Q. 32. Are you familiar with the S. $\frac{1}{2}$ of Sec. 25/16, 12?

A. —. I am sir.

Q. 33. Is any of the S. $\frac{1}{2}$ of Sec. 25 in Walker's Lake?

A. 33. I would say not. I have run two miles around it and did not see Walker's Lake.

Q. 34. How far is it from the S. W. corner of Sec. 25 to the Lake?

A. 34. I would say from $\frac{1}{2}$ to $\frac{3}{4}$ of a mile.

Q. 35. What is the nature of the land in the S. $\frac{1}{2}$ of 25 as to being high or low?

A. 35. There is a considerable part of it high land, with fine timber on it, I once lived on the N. W. $\frac{1}{4}$ of 25.

56 Q. 36. In what part of the $\frac{1}{2}$ section do you find the slashes?

A. 36. Along the eastern line. The western part of the section is high land.

Q. 37. Does this high land and heavy timber extend up to the eastern bank of the lake?

A. 37. It extends up to within a short distance of the bank.

Q. 38. What kind of timber do you find in the S. $\frac{1}{2}$ of Sec. 25?

A. 38. You find cottonwood, ash, elm and hackberry and on the east side is cypress.

Q. 39. What can you say of the size and age of this timber?

A. 39. Well I would say some of it is very old timber. Some of the elm was from two to three feet in diameter and some of the cottonwood was six feet in diameter.

Q. 40. Did you ever observe any cane on this land?

A. 40. I have seen some little cane, not much.

Q. 41. Did you ever observe any indications in the S. $\frac{1}{2}$ of Sec. 25 that it might have been at one time a part of Walker's Lake?

A. 41. I never observed anything that would indicate to me that it had ever been a part of Walker's Lake proper.

Q. 42. How does the S. $\frac{1}{2}$ of Sec. 25 with regard to its elevation and the nature of its timber compare with some other high lands in this section of the country?

A. 42. It is about the same elevation and character of soil as the

rest of the high lands in the country, except of course on the river bank, and about the same growth of timber.

Q. 43. How long have you been familiar with the S. $\frac{1}{2}$ of 25?

A. 43. I have observed it for more than 20 years.

Q. 44. Have you observed any change in the elevation of the land or the nature of the timber in that time?

A. 44. No sir. None whatever in that land or any other in the country.

57 Q. 45. Are you familiar with section 36, 16, 12?

A. 45. Yes, sir, I have known that for over twenty years.

Q. 46. State what part of Sec. 36 if any is in Walker's Lake?

A. 46. I would say the S. W. corner.

Q. 47. Is any part of the north half of sec. 36 in Walker's Lake?

A. 47. No sir.

Q. 48. How does the N. $\frac{1}{2}$ of Sec. 36 with regard to its elevation and timber compare with the S. $\frac{1}{2}$ of 25?

A. 48. It is about the same.

Q. 49. What is the nature of the land and the growth of the timber in the N. W. $\frac{1}{4}$ of Sec. 36?

A. 49. It is about the same as the S. $\frac{1}{2}$ of Sec. 25.

Q. 50. Is there any cypress slashes in the north half of sec. 36, and if so in what part?

A. 50. If there is any it is along the eastern side of it.

Q. 51. What is the nature of the timber in that cypress slash along the eastern side of that land?

A. 51. It is mostly small cypress with some large cypress.

Q. 52. Does Walker's Lake cover any part of the S. E. $\frac{1}{4}$ of sec. 36?

A. 52. It does not. It is low land with a great deal of small cypress on it.

Q. 53. What part of the S. W. $\frac{1}{4}$ of Sec. 36 is in the Lake?

A. 53. I would not suppose over 40 acres.

Q. 54. I mean that part of Walker's Lake that, up to the last few years, has always been covered with water and has well defined banks, and not the low lands around it. I have seen seasons when these low lands could have been cultivated up to the Lake proper.

Q. 54. When you speak of Walker's Lake proper what do you mean?

Q. 55. Is there any growth in what you consider the lake proper?

58 A. 55. There is now some undergrowth which has come up since the levee was built.

Q. 56. You speak of a cypress slash along the eastern side of the lake as originally meandered, now state where, if you know, this slash starts and where it ends?

A. 56. It starts near the north side of sec. 25 and runs south to the south side of section 32.

Q. 57. Has this slash any connection with Walker's Lake at any place?

A. 57. No sir, it has not. There is an intervening ridge between the slash and the Lake during its entire length.

Q. 58. Now do you mean to say that all of these conditions to which you have testified have existed, practically unchanged, for more than 20 years?

A. 58. Yes sir, they have, for 24 years.

Cross-examination:

Q. 1. What is the area of the ridge that you have mentioned, Mr. Buck with respect to that portion of the same upon which high land timber is found, lying within the meandered line of the lake?

A. 1. I would say that half of sections 25 & 36 is composed of high ridge, without respect to the meandered line.

Q. 2. You mean by that one half of that portion of section- 25 & 36 within the meandered line of the Lake?

A. 2. I mean one half of sections 25 & 36, without respect to the meandered line; as I understand it all of the south half of section 25 and all of section 36 except S. W. corner lie between the old meander line of the survey of 1847 and the east shore of Walker's Lake as I know it.

Q. 3. What is the area of the slough lying immediately west of the Government meander line and between that line and the ridge?

A. 3. I could not tell you the area of it. At the north part of section 25 it is not over 50 or 60 yards wide, but it gradually widens as it extends south east. When it gets down to section 32 it is probably a quarter of a mile wide.

Q. 4. What is the area of the slough as you term it compared with the area of the ridge?

A. 4. Well, as I stated before that varies. In all of 25 it would not average as much as one half of the area of the ridge. In 36 it is wider.

Q. 5. Is the area of the slough in 36 larger or smaller than that portion of the ridge in that section on which the large growth of timber is found?

A. 5. As I stated before, I could hardly answer that question. I am not so familiar with that as I am in 25. I am of the opinion that the area of the ridge is not as great in 36 as is the area of the low lands.

Q. 6. What is the width of the ridge you have alluded to?

A. 6. Well I could hardly state that. On the south section line of 25 I would say about $\frac{1}{2}$ mile. Between a $\frac{1}{4}$ and $\frac{1}{2}$. It gets narrower as it gets in 36.

Q. 7. What is the direction of this ridge?

A. 7. About the same as the lake from north west to south east.

Q. 8. What is the length of it?

A. 8. I could hardly answer that? It extends through 25, 36 and into 31. It is interrupted, however, by a ridge in one place.

Q. 9. What causes the interruption?

A. —. I do not know. It seems to terminate and then sets in below.

Q. 10. Is it broken by a depression?

A. 10. Yes there is a depression there.

Q. 11. What is the width of that depression?

A. 11. I could not say I wouldn't think exceeding $\frac{1}{4}$ of
60 a mile.

Q. 12. What is the width of the low lands between what you term the lake proper and the ridge?

A. 12. Along through sections 25 and 36 there is perhaps a hundred or a hundred and fifty yards of margin between the lake and the ridge.

Q. 13. Will you approximate the acreage of that ridge?

A. 13. No sir, I can not.

Q. 14. Have you ever been over Walkers Lake between the meander line on the east and the meandered line on the west, from north to south and from east to west?

A. 14. I think I have.

Q. 15. Will you approximate the acreage of that lake within its meander line according to the Government Survey of 1847?

A. 15. No sir, I could not, I might do so by taking time.

Q. 16. How does the area of that ridge compare with the area of what you term the lake proper?

A. 16. In sections 25 & 36 the area of the ridge is smaller than the entire area of Walker's Lake.

Q. 17. What is the difference in the size?

A. 17. There is a very great difference. I would say that from the head of the lake to Sandy Slough the lake is twice as large as the ridge in 25 & 36.

Q. 18. When you refer to the word lake, in your answer, do you allude to what is marked the lake on the map, or to what you understand to be the lake now?

A. 18. I mean what I take to be the lake now without regard to the meandered line.

Q. 19. Could you take a piece of paper and place thereon the outline of the lake, as fixed by the maps in common use, and define the ridge you have testified about?

A. 19. I could not without some time and preparation.
61

Q. 20. Do you know of more than one slough that runs across or through this ridge?

A. 20. I could not say that I know of any slough that runs across this ridge from east to west, the slough runs parallel with the ridge except the depression I have heretofore alluded to.

Q. 21. How many of these depressions do you now remember as being across this ridge?

A. 21. I remember none except that one.

Q. 22. Is the ridge of a uniform height from north west to south east?

A. 22. Yes, practically so except sometimes a narrow place is found where cypress is found.

Q. 23. At about what distance do you find these low places apart?

A. 23. There are a very few of them. I could not say the distance apart. Some of them are very narrow, perhaps not more than a few yards wide. I should say that depressions are not less

than two hundred and fifty or three hundred yards apart in which a cypress growth is found.

Q. 24. Do you find any Ash, Maple, Hackberry or Cottonwood in these depressions?

A. 24. Yes sir, sometimes you will find an occasional ash, or cottonwood in these depressions.

Further the deponent sayeth not.

CHARLES P. BUCK.

62

Deposition of C. M. Buck.

C. M. Buck being sworn deposes as follows:

Q. 1. State your name, age, place of residence, and occupation?

A. 1. Name, C. M. Buck, age, 27 years, residence, Huffman, Arkansas. Present occupation Farmer.

Q. 2. How far do you live from Walker's Lake?

A. 2. Two and one half miles.

Q. 3. How long have you lived in the vicinity of Walker's Lake?

A. 3. The greater part of the time for the last 25 years.

Q. 4. Are you familiar with Walker's Lake as it now exists and with the surrounding land?

A. 4. I am.

Q. 5. How long have you been familiar with this lake and the surrounding land?

A. 5. About eighteen or nineteen years.

Q. 6. To what extent do you know this lake and the surrounding country?

A. 6. I know it and have known it for the last 15 years I might say as perfectly as a man may become acquainted with woods land and a lake.

Q. 7. Did you know this land and lake as well 15 years ago as you know it now?

A. 7. Yes, fully if not better.

Q. 8. Are you acquainted with what would be the S. $\frac{1}{2}$ of Sec. 25 T. 16. R. 12, as same would be if surveyed?

A. 8. I am.

Q. 9. Do you know section 36?

A. 9. Yes, I am acquainted with it.

Q. 10. Are you also acquainted with W. $\frac{1}{2}$ and the S. E. $\frac{1}{4}$ of Sec. 31. T. 16 R. 13 East?

A. 10. I am.

63 Q. 11. Does Walker's Lake as it now exists touch any part of the S. $\frac{1}{2}$ of Sec. 25?

A. 11. No, it does not.

Q. 12. Which direction is Walker's Lake from this land?

A. 12. Well, the nearest point would be south-west.

Q. 13. How far is it from the west line of the south half of Sec. 25 to Walker's Lake at the nearest point?

A. 13. It would be between $\frac{1}{4}$ and $\frac{1}{2}$ mile possibly not over a quarter of a mile.

Q. 14. What can you say of the south half of section 25 as to its topography?

A. 14. It is what you would call high land. There is a cypress brake on the east side.

Q. 15. Is this cypress brake lower than the balance of the land in that half section?

A. 15. Yes.

Q. 16. What kind of timber do you find upon the south half of section 25?

A. 16. Cottonwood, Gum, Elm, Ash, some Oak, some Hickory and some Cypress. Cottonwood and Gum are the prevailing timbers.

Q. 17. What can you say of the quantity and size of the cottonwood growth on this land?

A. 17. Well, there has been quite a good deal of cottonwood cut off. There is quite a good deal of cottonwood on it yet and it is very large. It was as fine a brake of cottonwood timber as I ever saw, running from five to six feet in diameter.

Q. 18. What can you say about the size of the Elm, Gum and Oak timber on this land?

A. 18. There is not a great deal of Oak. It is from eight inches to two and one half feet in diameter. There is very fine Gum on it fine as I ever saw, now standing.

64 Q. 19. Upon what part of this half section do you find the Cypress principally?

A. 19. It is principally upon the east, along the eastern line.

Q. 20. What can you say of the size of the cypress?

A. 20. It ranges from small cypress 15 and 16 inches in diameter up to very large cypress.

Q. 21. About what proportion of this half section is covered with cypress?

A. 21. I would say sixty acres maybe in the half section that has a cypress growth. That would not be a cypress brake however there is cottonwood scattered over it. Immediately along the eastern line is solid cypress and it thins out as you go west and plays out entirely.

Q. 22. How does the timber on the N. $\frac{1}{2}$ of Sec. 36 compare with the timber on the S. $\frac{1}{2}$ of Sec. 25?

A. 22. Just about the same, same growth and same variety.

Q. 23. Does Walker's Lake as it now exists touch any part of the north half of Sec. 36?

A. 23. No it does not.

Q. 24. Does the cypress brake and slash that you mention touch the N. $\frac{1}{2}$ of Sec. 36?

A. 24. Yes along the east side of it across the N. E. corner.

Q. 25. Are the various growths of timber on the N. $\frac{1}{2}$ of Sec. 36, as large, and does it indicate as great an age as that in the south half of Sec. 25?

A. 25. Yes, as far as I can judge about the same age and size timber.

Q. 26. Do you know of any timber having been cut on the land above referred to since you have known this land?

A. 26. Yes. On the south half of Sec. 25, Tipton Bros. bought the timber from Williams and cut and hauled the entire fall. 65 I do not know the amount of the timber cut as it was a great deal. On the north half of section 36 Cassidy and Ash floated in 1897 about $\frac{1}{2}$ million feet to Tipton Bros.

Q. 27. When was this timber cut off the south half of twenty five that you speak of?

A. 27. It was cut in 1896.

Q. 28. What variety of timber was cut at this time?

A. 28. Cottonwood principally some little Ash and some Gum.

Q. 29. Does Walker's Lake as it now exists, touch the south half of section 36?

A. 29. Yes. Runs across the south west corner.

Q. 30. About what proportion of the south west quarter of thirty-six is in the lake?

A. 30. Half of it, possibly something like half of it, I expect.

Q. 31. Is the south east quarter touched by the lake?

A. 31. No.

Q. 32. What can you say of the variety and size of the timber on the south half of section 36?

A. 32. On the south half there is more cypress quite a good deal more than on the north. There is a good deal of cottonwood, ash gum and elm, and on the west and east side there is Cypress.

Q. 33. Does Walker's Lake touch any part of section 31?

A. 33. No, it does not.

Q. 34. In your answers to the above questions you have located Walker's Lake with respect to this land, as it now exists. Now you can state whether or not Walker's Lake has been located comparatively as it now is since you have known it?

A. 34. Walker's Lake has never changed since I have known it since 1885.

Q. 35. Is Walker's Lake a lake that is full of water for the entire year, or is it dry during dry seasons?

66 A. 35. It has always gone dry during dry seasons since 1887. I do not know before that. It was dry in 1887. It is full of water at the present time.

Q. 36. What can you say of much of the surrounding land during wet seasons of the year? Are they practically covered with rain water?

A. 36. Well a good deal of the surrounding land is covered by rain water during wet seasons.

Q. 37. Did you ever survey these lands or help survey them; the lands above mentioned?

A. 37. I have done both. I have helped run instruments on greater part of them. I have surveyed them myself.

Q. 38. Have you had some experience as a surveyor?

A. I studied civil engineering and have done considerable work surveying.

Q. 39. State whether or not you have had some experience in estimating timber or logs?

A. 39. Yes, I have done some of that, I have estimated timber.

Q. 40. Are you familiar with the meander line of Walker's Lake? as established by Government survey in 1847?

A. 40. I am.

Q. 41. Have you ever located or found a corner established by the surveyor who made this survey?

A. 41. I have.

Q. 42. How many of these corners have you found on or near this meander line?

A. 42. I found but two on the meander line. I have found and helped to find several, quite a number in that immediate neighborhood.

Q. 43. Where are those corners located that you say you have found on the meander line?

A. 43. I found one on the range line at the frl. S. E. corner of the N. E. $\frac{1}{4}$ of 25.

67 Q. 44. Upon what kind of a tree was this mark placed?

A. 44. It was upon a sweet gum tree.

Q. 45. Is this tree still standing?

A. 45. Yes.

Q. 46. What is the size of this tree?

A. 46. I should judge it to be somewhere about 24 inches now.

Q. 47. Did you cut the Government mark out from this tree or help to?

A. 47. I did, it was perfectly plain Figures intact.

Q. 48. How deep under the surface was this?

A. 48. At the time it was cut out, which was four years ago, it was four inches under the surface.

Q. 49. Was this corner located from the Government field notes?

A. 49. It was.

Q. 50. Where did you find the other corner that you spoke of?

A. 50. I find, after reflection that I only located one corner on the meander line, but found one at the N. W. corner of 25.

Q. 51. Upon what kind of a tree is this corner marked that you speak of as being at the north west corner of Sec. 25?

A. 51. It was upon an Ash.

Q. 52. Was this corner located from the Government field notes also?

A. 52. It was.

Q. 53. Did you find the Government mark upon this tree?

A. 53. Yes.

Q. 54. How far below the surface was this mark?

A. 54. It was about five inches.

Q. 55. Was both of these marks made in 1847?

A. 55. Yes, made in 1847.

Q. 56. Have you ever had occasion to cut out Government corners prior to 1847, if so state when they were made upon what kind of timber you found them and how far below the surface?

68 A. 56. I helped Mr. Archlio cut out the corner on two Elm trees corner section 26. 16. 13. They I think were made in 1836 my recollection is that they were about 5 or 6 inches from the surface.

Q. 57. From your experience and observation in timber, can you tell from the appearance of a tree something near the age of them?

A. 57. I can tell something near their age upon the theory that timber makes one ring each year. I have counted rings in timber repeatedly and know something about the number of rings that would be in a tree of a certain size and kind.

Q. 58. In the best of your judgment and experience, how old would you say the heaviest of this timber is. I mean the large timber on the land above referred to as it is at this time?

A. 58. That is hard to say in my opinion. Some of it is hundreds of years old. There is timber there that has attained a very large growth 16 or 17 years ago and as far as I can see has not grown any since. How long a tree will stand without decaying after it has attained its growth I cannot say.

Q. 59. Has there been a perceptible change in the size or appearance of this timber as a body since you have known it?

A. 59. No, there is not. I can see no material change young timber has no doubt grown some while old timber has decayed and fallen down.

Q. 60. How does the land above referred to, with the exceptions of the part of 36 that you say is in Walkers Lake compare in altitude and variety and size of the timber with other lands in that vicinity?

A. 60. With the exception of the cypress brake along the eastern side and the cypress along the lake in the west side of 36 it is practically the same as that upon other high lands in the neighborhood.

69 Q. 61. How does this cypress land compare in altitude and the size of its timber with other cypress land in Mississippi County, I mean lands that have been surveyed and sold?

A. 61. It is higher and dryer than some I know of that has been surveyed and sold.

Q. 62. Do you know the Peck cypress and the Freeman cypress, both located within a few miles of Blytheville?

A. 62. I do.

Q. 63. Are these Cypress brakes on surveyed or platted lands?

A. 63. Yes, they are both surveyed and platted.

Q. 64. How did this cypress land in section 25 & 36 and all in 31 compare in point of altitude with the other cypress brakes that I have named?

A. 64. The cypress brake along the east side of 25, 36 and all in 31 is much higher and dryer than either Freeman's or Peck's. From point of altitude, they are higher and dryer. I have never seen the time when a person could not ride with perfect safety across this land except in overflow time, while at the present time you could not cross Peck's cypress horse back.

Q. 65. Has this cypress brake that you mention as being on the

east side of Sec. 25 and 36 any connection with Walkers Lake at either end?

A. 65. It has not. This brake commences near the S. E. corner of the S. W. $\frac{1}{4}$ of section 32 T. 16 R. 13 and runs in a northwesterly direction up into the north half of section 25 T. 16 R. 12 where it plays out entirely.

Q. 66. How is the cypress brake at its north end separated from Walkers Lake?

A. 66. It is separated with a ridge of very high land a little over a mile in width.

Q. 67. Is it separated from the lake by high land during its entire length?

70 A. 67. It is.

Q. 68. Do you know whether or not the plaintiff Joanna Little or any one holding under her, is at present in the actual possession of any of this land, I mean either the south half of twenty-five or all of thirty-six in township sixteen north range twelve east; or the west half of the south east quarter of section thirty-one township sixteen range thirteen east.

A. 68. There is.

Q. 69. State what lands they are in the possession of and what is the extent of their possession?

A. 69. J. L. Spicer is in possession under a lease from Joanna Little but I do not remember just how much land. All that he has leased he has in cultivation with a house upon it and under fence. He lives upon the land.

Q. 70. Do you know whether or not the plaintiff has caused a wire fence, or wires to be run around this land, thereby enclosing it. I mean all the land above referred to?

A. 70. It is all enclosed with two strands of barbed wire.

Cross-examination by Attorneys for Defendant:

Q. 1. What is the area of the land in Sec. 25, 36 and 31 as you designate them and within the meander line of the lake upon which this growth of Oak, Cottonwood, Elm and Gum timber is to be found?

A. 1. I would say between nine hundred and one thousand acres.

Q. 2. Upon what proportion of that land is this cypress timber to be found?

A. 2. It will be between three and four hundred acres that would be lake and cypress timber.

Q. 3. How much land in acreage do you estimate to be between this amount of high land and the eastern point of the lake according to the meander line of Government survey?

71 A. 3. There would be somewhere between two hundred and two hundred and fifty acres.

Q. 4. What is the character of the two hundred or two hundred and fifty acres with respect to elevation?

A. 4. It is an ordinary cypress brake some of it comparatively high and some depressions in it that holds rain water in wet seasons. Some of it never holds rain water or has not since I have known it.

Q. 5. Is any portion of that now indicative of a Lake?

A. 5. No, I would say not the deepest place in that slash is near the north east corner of Section 36.

Q. 6. How wide is the slash just referred to?

A. 6. The slash at the N. E. corner of the S. $\frac{1}{2}$ of Sec. 25 is a little less than one half quarter. At the N. E. corner of Sec. 36 it is a little over a half quarter almost a quarter in width.

Q. 7. Does it continue around and find an outlet into the Lake?

A. 7. The cypress growth continues around almost to the foot of Walkers Lake. The low land plays out in Sec. 31 but a high land cypress growth continues almost to the south end of the lake and is separated by a high ridge of land that comes around on the north bank of Sandy slough.

Q. 8. How does that cypress slash appear beginning at that point where it is apparent in section 31 running thence along the Government survey line and along the north side of the lake back to the main lake?

A. 8. Well it commences somewhere along in 31 about the north side of the S. W. $\frac{1}{4}$. It has the appearance of all ordinary cypress sloughs. Near the right along immediately west of the meander line in the deeper part of it all of the way up it follows along the meander line to the south east corner of the north half of section 25 where the meander line crosses it and continues on up almost entirely through the north half of 25.

72 Q. 9. What proportion of this land you term high land inside this lake is entirely without cypress growth?

A. 9. The area that I mentioned as being between nine hundred and one thousand acres is almost if not entirely without cypress timber. There may be possibly on some of the comparatively high land a scattered cypress tree.

Q. 10. During the twenty years that you have been acquainted with this lake, what has been the extent of the deposit or increase in height of this land within the meander line of the lake?

A. 10. With the exceptions of part of 31 which appears to me to come some higher since I have known it I can see very little change in the land. I know of stumps cut there in '83 & '84 so far as I can see they are as high above the ground now as they were then in '85 & '86. I have never seen but very little deposit that far from the river. I have dropped things overboard during overflow in '87 & '89 along the bank of Walkers Lake and have gone back and found them after the water had gone down they were never covered by deposits.

Q. 11. Is it your observation and experience that this condition prevails generally over land located similar with those in and around Walkers Lake with respect to distance from the river?

A. 11. I have seldom seen but little deposit from overflow a distance of one or two miles from the river where there were intervening canals, except along bayous or water courses.

Q. 12. How does this body of land that you have just mentioned compare in elevation to the surveyed lands immediately around Walkers Lake?

A. 12. The high land within the meander line is not as high of

course as the land immediately along the river bank but some of it is higher than some of the land immediately east of the meander line that is now in cultivation.

73 Q. 13. What proportion of these lands would you say are higher than those in cultivation?

A. 13. There are six or seven hundred acres in the meander line that are higher and dryer than some of the land in cultivation east of the meander line.

Q. 14. How much of the land is in cultivation of the character you have just mentioned and where is the same located, and who are the owners of same?

A. 14. Captain Rogers owns forty acres of the north east quarter of section 25 and one hundred and sixty acres of the south west quarter of 24, all of which is in cultivation and as low, if not lower and wetter than the seven hundred acres I have mentioned within the meander line. There is some fifty or sixty acres in cultivation that is known as the Williams field that is as low also. There is some forty or fifty acres in the Keith place and 40 or 50 acres belonging to Tom Hatfield all of which is as low as the land I have mentioned within the meander line.

Q. 15. What portion of these lands you call high lands within the lake are now covered with water?

A. 15. None of them.

Q. 16. Do you mean to say that no water can be found between the center of Sec. 36 and 25 and the eastern point on the meander line of the Lake?

A. 16. I do not. Water can be found in the slash on the east side of section 25 and 36 near the north east corner of 36 there being none on 31 and some on the east side of the south half of 36.

Q. 17. How often have you seen this land between this ridge or high point of land in 36 and the east point on the meander line covered with water other than overflow from the river?

A. 17. I have seen water along in that cypress slash along the east side of 25 and the east side of the north half of 36 vary in
74 width from one hundred to two hundred yards most every winter during the rainy season since I have known it.

Q. 18. And from this low land upon which the water stands, does the ground gradually become higher as you go west toward the center of 36?

A. 18. Yes, it does.

Q. 19. What information have you as to the growth of a cypress tree?

A. 19. I haven't any except what I have observed in the last sixteen years, and with the theory that a tree makes a ring each year of its life.

Q. 20. What is the increase in the size of a tree on the basis of a ring?

A. 20. That varies with the different kind of trees.

Q. 21. With respect to cypress timber?

A. 21. That varies with age, my observation has been that a small cypress from eight to ten inches will run about $\frac{3}{4}$ inches or in

taking the entire diameter of the tree, one and one half inches to the ring, as the tree grows older they become closer and in large timber three or four feet in diameter a ring would perhaps not represent more than a half or three quarter inch growth.

Q. 22. On the same basis what can you say of a cottonwood tree?

A. 22. Cottonwood is like cypress. In a young tree the ring would perhaps represent a growth of two or three inches and in old timber perhaps three quarters to an inch.

Q. 23. And about gum?

A. 23. Gum is about the same as cypress, perhaps a little more rapid growth.

Q. 24. What is your observation with respect to oak?

A. 24. Oak, I know practically nothing about it.

Q. 25. Are you familiar with Elm?

75 A. 25. I am with Elm. Elm is a very slow growth, about the same as cypress from my observation.

Q. 26. In Ash?

A. 26. Ash is slower than cottonwood; not quite as slow as cypress, this varies in the kind of Ash.

Redirect examination:

Q. 1. Are you acquainted with E. M. Huffman?

A. 1. I am.

Q. 2. State whether or not you are familiar with his habits as to his being a man who frequently makes trips into the woods and who is acquainted with the woodlands in the vicinity of his home, or otherwise?

A. 2. I have known him ever since I can remember and do not recall having ever seen him in the woods outside of his field. He has never hunted since I have known him and I have never seen him in the woods that I now recall.

The counsel for the defendant objects to the foregoing question and answer on the ground that same is not in rebuttal of cross examination.

Q. 3. State whether or not he goes into the woods for the purpose of hunting his stock?

A. 3. He does not so far as I know. I never knew of him being in the woods hunting stock. His brother I. H. Huffman has always done all of such work for the family since I have known him.

Same objections to question and answer by counsel for defendants.

Q. 4. Are you acquainted with J. H. Bracken and if so how long have you known him?

A. 4. I am acquainted with him and have known him personally for about 15 or 16 years. I have heard of him and have
76 known him when I saw him for perhaps 18 or 20 years.

Q. 5. How long has he lived in the vicinity of Walkers Lake or in the Huffman neighborhood?

A. 5. I suppose about ten years.

Q. 6. Did you ever see or hear of J. H. Bracken being upon or
near Walkers Lake for the purpose of hunting, fishing or trapping

prior to his moving to that neighborhood about 10 years ago?

A. 6. I never knew of him being upon the lake until shortly after he moved to that neighborhood.

The foregoing question and answer were objected to by counsel for defendant because same is not in rebuttal of cross examination.

77

Deposition of Jno. R. Buck.

JOHN R. BUCK being sworn states as follows:

Q. 1. State your name, residence and occupation and age?

A. 1. John R. Buck, age 37 years, residence Huffman, Arkansas, occupation farmer.

Q. 2. How long have you lived at Huffman?

A. 2. About 24 years except 1 year.

Q. 3. How far have you lived from what is known as Walkers Lake?

A. 3. Well we generally considered it about two miles or two miles and a half.

Q. 4. On which side of the lake has been your residence?

A. 4. The east side.

Q. 5. How familiar have you been with Walkers Lake?

A. 5. Well, I have been very familiar with it for about twenty years. I have been over it night and day. I have hunted over it a great deal.

Q. 6. On what quarter section has been your house?

A. 6. Well I have lived at different places at different times. I have lived on the north half of 32, and I now live on the south part of 29, 16, 13.

Q. 7. In making numerous excursions to Walkers Lake which you have mentioned state what sections of land you necessarily crossed?

A. 7. I cross sections 31 and 36 most of the time. In going from here I cross sections 30 and the south half of 25.

Q. 8. How long have you been intimately acquainted with this territory just mentioned?

A. 8. About 20 years I have not been intimately acquainted with the lines for that length of time. I have found out where the lines are since that time.

Q. 9. During that 20 years what has been the character of sections 31, 36 and the south half of 25 with reference to whether they have been the bed of a lake or not?

A. 9. In section 31 there is a low slash; then you strike a ridge with cottonwood timber on it, and in 36 there is a ridge with heavy timber, there is heavy timber on the south half of 25 there is a slash on the east side of the south half of 25.

Q. 10. During these 20 years has the territory referred to been a lake or not?

A. 10. It has not the water stands in the slash I speak of in wet times.

Q. 11. Has any portion of section 36 been the bed of a lake?

A. 11. Yes sir.

Q. 12. In what part of the section is the lake?

A. 12. In the south west part of it.

Q. 13. During these years when you say the territory referred to was not a lake was the outline and banks of Walkers Lake well defined?

A. 13. Very well, yes sir.

Q. 14. Where was Walkers Lake with reference to the sections that — have referred to?

A. 14. From section 36 it was both south and west. From 25 the nearest point to the lake was a south west course.

Q. 15. How far was the lake from the south half of Sec. 25?

A. 15. About a half of a mile.

Q. 16. You have stated that it cut through the south west corner of 36; state how far it was from the west line of 31?

A. 16. It is somewhere near three-quarters of a mile from the south west corner of section 31.

Q. 17. Have you had occasion to be frequently upon the lake?

A. 17. Yes sir I have been upon it a great deal.

Q. 18. Were you as familiar with the lake 20 years ago as you are now?

79 A. 18. Well as respects to most of the lake I was more familiar with it than I am now.

Q. 19. In that twenty years has there been or not any material change in the outline and area of Walkers Lake?

A. 19. No material change in the outline, no sir.

Q. 20. What, approximately is the length and breadth of the lake?

A. 20. Well it is about three miles long and about one half to three quarters wide.

Q. 21. Are you perfectly familiar with the section lines which define section 31, 36 and 25?

A. 21. Well yes sir I suppose so, I have helped to survey it out about four times.

Q. 22. Starting at the south west corner of section 30 and proceeding westward on the section line, state what is the character of the land so far as concerned elevation and also the character of the timber with regard to size and variety?

A. 22. When you start at the corner of section 30 you strike what we term low lands. There are large cypress trees and small ones. And as you go west you strike a smaller growth of timber for a short distance that runs for something like a quarter, then you strike a ridge that extends very nearly to the south west corner of 25. From that corner to the lake there is a small growth of timber, mostly cypress to the lake.

Q. 23. How does the south half of 25 north of the line which you have been proceeding upon compare in elevation and the character of the timber?

A. 23. It is about the same.

Q. 24. What have you to say as to the size and variety of the timber on the south half of 25?

80 A. 24. There is cottonwood, gum, ash, some oak some hackberry, some very large cottonwood, some large oak, some good size elm.

Q. 25. Starting at the south east corner of the north east quarter of 36, and proceeding westward to the present Walkers Lake, state what is the elevation of the ground, and the character of the timber?

A. 25. It is high. There is very large timber on that, there is some oak, ash, gum, hackberry and cottonwood.

Q. 26. Starting from the same point and proceeding eastward to the section line between 32 and 31, what is the nature of the ground and the timber?

A. 26. Well the ground gets lower as you come eastward from that corner. There is some big cottonwood timber scattered in the cypress timber, but it is mostly large cypress. There is some ash and gum.

Q. 27. Where with reference to section lines, would you locate the ridge which from your testimony seems to run through the land in question?

A. 27. Well the main ridge is of a little past the center of 36.

Q. 28. You say that the ridge would be north and south through about the center or a little west of the center of 36; now state how wide that ridge is east and west.

A. 28. Well it is wider at the section line between 36 and 25 and gets narrower as it nears the lake. It is all of a half mile wide at that line.

Q. 29. How far does this ridge extend north and south?

A. 29. Well it extends a half mile south of this line between 25 and 26, and extends at least a mile before it is broken at all towards the north. It is then broken slightly by a cypress slash.

Q. 30. What is the character of the land east of the ridge and south of it?

A. 30. It is some lower lands than I have just spoken of.

81 Q. 31. It is in any sense a part of the present Walkers Lake?

A. 31. I should say not. There is large timber upon it.

Q. 32. Speaking generally with reference to the south half of 25 and 36 and 31, will you give your opinion as to the probable age of the timber growth?

A. 32. Well I couldn't say. There is large timber. I should say that there is timber at least one hundred years old. At least I have seen no change in it in twenty years.

A. 33. Approximate the diameter of some of the largest oak trees which grow upon the lands above referred to?

A. 33. I think some of the largest trees that I have observed on these lands are three feet in diameter.

Q. 34. Are there oak trees of such dimension scattered over all this land or only in spots?

A. 34. There are only in spots about over it.

Q. 35. Where is most of the oak found, with reference to the ridge?

A. 35. Most of the oak is on the west side of the ridge near the lake.

Q. 36. What is the size of some of the largest cypress trees growing in what you have termed the lower lands east of the ridge?

A. 36. There is some old trees six or seven feet in diameter.

Q. 37. Has much of the timber been cut on these lands?

A. 37. Yes sir.

Q. 38. Are there or not, stumps indicating that many trees of like dimension have been removed?

A. 38. There is not a great many of the cypress, but lots of the cottonwood. I mean in 25 and 36.

Q. 39. Does the timber now upon these lands and the stumps indicate that the land has been or not heavily timbered?

A. 39. Yes sir. Most of it would indicate that it had been heavily timbered.

82 Q. 40. Is the cottonwood, now standing, and the stumps of the cottonwood trees, located along the western portion of 36 and 25 as distinguished from the eastern portion of the same?

A. 40. No sir. In 25, near the center and also in 36.

Q. 41. If you know of any unusually large cottonwood near the present shore line of the lake which have since been destroyed, locate same with reference to the section lines on said shore line?

A. 41. I know of one that we used to call our landing tree. It is about two hundred yards south of the center of sec. 36, and not more than fifty feet from the present east shore line of the lake.

Q. 42. How large a cottonwood was this when you were a boy 20 years ago and in the habit of seeing it?

A. 42. It was about 4 feet through.

Q. 43. You say this tree stood so near to the bank that you used it as a guide post for a landing place?

A. 43. Yes sir.

Q. 44. As I understand you have lived continuously more than 20 years within a short distance of the lands about which you have testified?

A. 44. Yes sir.

Q. 45. The controversy between the parties to this suit is as to whether Walkers Lake was originally as shown by the maps of Mississippi County in general use, and especially a map prepared by the United States Government about 1840 or whether the lake was at the time of that survey, and ever since has been, as it now appears; I ask you to state whether during the years of your observation there has been any recession westward of Walkers Lake, or whether it has overcovered the lands lying east of the present shore line, as you have defined same in your testimony?

83 A. 45. I consider that it never was as the map shows it. I think it always has been as it is now. During wet seasons and overflows the water gets, or did get, back into the cypress and lowlands surrounding the lake.

Counsel for the defendants object to the foregoing question and answer, because the question purports to be a fact; because the question is leading and because it seeks an opinion from the witness, and because the answer is an opinion and not based upon facts, within the witness's knowledge.

Q. 46. During the time that you have known Walkers Lake has

or not the lake bed been open or has there been a growth of timber in the lake?

A. 46. There used to be some small cypress scattered out in the lake, but there was more open water than timber in it.

Q. 47. Has or not there been in the lake that kind of growth of timber which you have testified characterized these lands east of the lake?

A. 47. No sir there has not.

Cross-examination:

Q. 1. Is it your observation that timber in this country does not attain a greater size within twenty years in which to attain growth?

A. 1. Yes it has grown fast in the last twenty years, but you can very readily tell a young growth tree from an old growth as all of us know.

Q. 2. What can you say of the difference of the size of a cottonwood tree of the two growths mentioned in this immediate country in twenty years?

A. 2. Well I would say there is a good deal of difference.

Q. 3. And you also say that growth occurs in Oak, Ash, Hackberry, Elm, Maple, Gum and Cypress?

A. —. Yes I suppose they do, most everything grows in this country.

84 Q. 4. Beginning at the township line between township 15 & 16 and at the S. E. corner of Sec. 32, what can you say of the character of timber and soil and the elevation of the soil on a line running due west to the south east corner of Sec. 36?

A. 4. Well there is a mile and a half of it that is good soil and I might state further that a portion of it is made soil and for the next half mile towards the lake the land is low and swampy. Most of the timber is cypress.

Q. 5. How large is the cypress on that line?

A. 5. Next to the river the timber is large, as you go back the timber gets smaller next to the lake and the timber is large.

Q. 6. Beginning at the same point what can you say of the elevation of the land with respect to the land immediately north of the meander line, and also in what direction the land falls?

A. 6. Well immediately north of the meander line there is no difference in the elevation, but as you go towards the lake it gets lower.

Q. 7. Have you noticed any change in the elevation of that land in the twenty years you have been acquainted with it?

A. 7. Yes sir.

Q. 8. What changes have been made?

A. 8. In there it has filled up a great deal since I first knew it.

Q. 9. Beginning at a point in the S. E. corner of Sec. 36 and running thence west on that line what can you say of the character of land and timber?

A. 9. Well it is all cypress and low land. It is what I would call an island between two arms of the lake.

Q. 10. Beginning on the township line at the S. E. corner of Sec.

32 running thence due west on a line to the west meander line
thence along the meandered line around the lower end of the
85 lake to the starting point what can you say of the land and
the timber growing upon the same?

A. 10. Along the line westward I have described the timber; from where the line mentioned touches the meandered line on the west to what I call Sandy Slough, which is a drain from Walkers Lake to Beauford Lake, the land is high, cottonwood timber and cane from there east a short piece there is a little cane then commences low land and cypress timber.

Q. 11. How far does the growth of timber cane and high land extend in section one north in the direction of the section line south of section 36?

A. 11. I don't think it runs over the meandered line.

Q. 12. What is the character of the land and timber between the meandered line in section one and the section line south of section 36?

A. 12. Swampy and cypress timber a part of the lake.

Q. 13. What is the elevation of the land and the character of the timber on that portion of the lake north of the township line and east of the east line of 36?

A. 13. It is cypress growth, a few cottonwoods mixed in with it; a part of it is reasonably high land, the rest is low.

Q. 14. How does the elevation of the land compare with the land immediately north of the meandered line?

A. 14. Well immediately north of the meander line it is about the same after you go a short piece the land gets higher.

Q. 15. In which direction is the fall of the land?

A. 15. It is towards the lake.

Q. 16. Have you noticed any change in the elevation of that land in the last twenty years?

A. 16. Yes sir in the lower part of 31 I have, and in the lower part of 32 in the S. W. $\frac{1}{4}$ I have noticed a change.

86 Q. 17. Please state the changes you have noticed in this land?

A. 17. It has filled up a great deal.

Q. 18. What is the character of the land and timber on that portion of the lake as defined by the maps in common use lying west and north west of the west line of section 36 & 25?

A. 18. Well there is some cottonwood and a great deal of cypress it is mostly low land.

Q. 19. Would you designate it as lake land?

A. 19. Well some timber grows west of that line for about a half mile and then the lake commences.

Q. 20. What is the character of timber on the strip mentioned?

A. 20. There is some large timber, but mostly small timber.

Q. 21. What per cent of the timber is cottonwood?

A. 21. Well about seven per cent of it is cottonwood.

Q. 22. What is the elevation of the land immediately south of the meandered line of the lake at the point where the same crossed section 25?

A. 22. It is low immediately east for a piece, it then gets higher as you go eastward for $\frac{1}{2}$ mile; then it gets lower as you near the east line of 25.

Q. 23. What character of timber is on the low land?

A. 23. Some cypress and some cottonwood.

Q. 24. At what point in section 36 does the ridge that you have testified about come to a low point or reach the low lands?

A. 24. The ridge that I have testified about nearly a $\frac{1}{2}$ mile runs down near the center of 36.

Q. 25. How wide is that ridge where it strikes the center of 36?

A. 25. Between $\frac{1}{4}$ and a $\frac{1}{2}$ mile.

Q. 26. Do you find any cypress growth on that ridge?

A. 26. Very little, you may find a few cypress trees on it.

Q. 27. Do you find slashes running into or across it?

87 A. 27. There are none running across the ridge, there are some running up to the ridge.

Q. 28. What species of timber is found growing in the slashes that run up to the ridge?

A. 28. Cypress some ash and some cottonwood.

Q. 29. Will you approximate the acreage of the ridge?

A. 29. Well there must be two hundred or two hundred and fifty acres.

Q. 30. Will you approximate the acreage of Walkers Lake within the meandered line?

A. 30. I could hardly do that.

Q. 31. Will you say that the plat that you now have is a representation of the lake as shown by the United States survey and the maps in common use?

A. 31. Something like it.

Q. 32. From that are you able to arrive at an approximate acreage of Walkers Lake?

A. 32. I could by figuring it out.

Redirect examination.

Q. 1. When you first knew this country which as you say was more than 20 years ago starting from the S. E. corner of Sec. 32 how far west would you have to travel to reach Walkers Lake?

A. 1. A little over a mile and a half.

Q. 2. Was there any indication at that time, that that land had ever been a part of Walkers Lake proper?

A. 2. But very little if any.

Q. 3. What was the nature of the timber growth?

A. 3. It was mostly cypress there was some cottonwood.

Q. 4. At the same period starting at the S. E. corner of the N. E. $\frac{1}{4}$ of sec. 31, and going west how far would you have had to
88 have gone to have reached Walkers Lake?

A. 4. You would have had to go a little over 2 miles.

Q. 5. Was there any indication that those lands had ever been a part of Walkers Lake?

A. 5. No sir.

Q. 6. At the same period starting at the S. E. corner of sec. 25

and going westward how far would you have had to travel to reach Walkers Lake?

A. 6. Nearly a mile and a half.

Q. 7. Was there any indication that those lands had ever been a part of Walkers Lake?

A. 7. No sir.

Q. 8. What was the nature of the land as to elevation and timber on the S. W. corner of 25?

A. 8. Right at the corner of the land would be termed low, back from the corner the land is higher.

Q. 9. State whether or not the ridge that you have mentioned running through 36 & 25 extends indefinitely to the north?

A. 9. Well I would say that it does, it does not run exactly north but there is a ridge running clear on to the main body of high land.

Q. 10. In your testimony you have spoken of a cypress slash, or low lands, being located along the eastern meander line of the lake as shown on the maps, has this slash or slough any connection with Walkers Lake proper at either extremity?

A. 10. No sir.

Q. 11. Do you mean to say that it is entirely separated from Walkers Lake by the ridges that you have mentioned?

A. 11. Yes sir.

Q. 12. Was this the condition more than 20 years ago?

A. 12. It was 20 years ago.

89 Q. 13. What do you consider an average width for Walkers Lake from the center of Sec. 36 to its outlet at Sandy Slough?

A. 13. Something over a half mile.

Q. 14. What proportion does Walkers Lake proper as you knew it more than 20 years ago and as you say it is today, bear to the entire area of Walkers Lake as shown on the map?

A. 14. About one third.

Q. 15. State whether or not it is true that all lands in this community slopes back from the Mississippi River without regard to the lake?

A. 15. All that I know of do.

Q. 16. Has the general nature, size and appearance of the timber upon all of these lands about which you have testified changed materially since you first knew them?

A. 16. There has not been any change except the foot of the lake in Sec. 32. There has been very little change in sec. 31. There has been no material change in the timber, except some of it has been cut off.

Q. 17. Please locate with regard to the sub-division of sections the place now owned by Captain Rogers in the vicinity of Walkers Lake?

A. 17. It is in the S. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 25, T. 16, R. 12.

Q. 18. Now will you please locate Esq'r Huffman and Click Huffman's places?

A. 18. S. $\frac{1}{2}$ of 29 and the S. $\frac{1}{2}$ S. E. $\frac{1}{4}$ of sec. 30 and Click Huffman's is in N. W. $\frac{1}{4}$ of 32.

Q. 19. When was the levee constructed in front of these lands?

A. 19. In 1893 and 1894.

Recross-examination.

90 Q. 1. What has been the changes in the depth of Walkers Lake as you term it since you first became acquainted with it?

A. 1. Not more than a foot or a foot and a half.

Q. 2. What changes has been made in the additions to the soil on the lands along the meandered lines and east of Sec. 36?

A. 2. About a foot or a foot and a half.

Q. 3. How many years of the eleven years between the years of 1894 and 1905 has those lands been free of Mississippi River water and its deposits?

A. 3. Every year but one.

Q. 4. What is the usual timber growth upon the lake lands in this part of Mississippi County?

A. 4. Cypress.

Q. 5. Can you now tell me one instance where a small growth of cypress can be found away from marsh or lake lands or a water course?

A. 5. No I can not.

Q. 6. Do you mean to say that the slash as you term it on the east side of so called Sec. 36 has no outlet for its waters?

A. 6. It has none into the lake.

Q. 7. Does that slash now contain water?

A. 7. I don't know.

Q. 8. How often does the water become sufficiently high to cross the ridge into the lake?

A. 8. Most every year of an overflow when the sipe water fills it up.

Q. 9. Then do I understand that that water is able to cross the ridge and flow into the lake every year that there is an overflow?

A. 9. Yes every year that there is an overflow, or excessive rains it does not run over the ridge west of there it runs out south.

Q. 10. What is the difference in the elevation of the soil at the S. E. corner of 36 and the S. W. corner of 29?

91 A. 10. I could not tell you the difference.

Q. 11. Could you approximate it?

A. 11. There would be some three or four feet difference.

Q. 12. Is it not a fact that all of the lands north of the meander line drain into the lake?

A. 12. Most of it does when it gets high enough to run over those places.

Q. 13. Where do those waters first meet before going into the lake?

A. 13. The water in 29 and 30 goes into the slash that I have mentioned that west of the lake goes into the lake.

Q. 14. How many acres would you estimate to be in the slash east of what you term to be section 36?

A. 14. It would I suppose that there was something over one hundred acres in the entire slash.

Q. 15. How much of the land is covered with water in an ordinary season in that portion of the lake east of a line drawn north and south through the same running along the east side of section 36?

A. 15. Well I suppose there would be about 100 acres.

Q. 16. And the hundred acres would just cover the slash?

A. 16. No, sir, it has no reference to the slash.

Q. 17. The slash would be full of water also would it?

A. 17. No, sir.

Q. 18. During the spring which is the rainy season and at a time when the waters from the lands contiguous to the lake are draining into it, what portion of the land just referred to in acreage is covered with water and to what depth?

A. 18. In excessive rainy seasons a large portion of it is covered with water, from 2 to 3 feet deep.

Q. 19. For what length of time does the water remain upon these lands?

92 A. 19. Some years it remains for quite a while.

Q. 20. What is the average length of time that the water remains upon these lands?

A. 20. For about two months.

Q. 21. Do I understand you to say that the appearance of the land and the growth of timber being mainly a small cypress growth, of the land lying east of the line that I have drawn in my former questions bear no indication now and never have to your mind of being or having been lake land?

A. 21. No, sir, they do not. I did not say the growth of cypress was always a small growth. Most of the big cypress has been cut.

Q. 22. What character of land do you term this?

A. 22. I call it low land.

Q. 23. Is it the same character of land that is usually surveyed and has been surveyed in this country?

A. 23. A good deal of it is, yes, sir.

Q. 24. Will you kindly name one track of land in this section of the county of the same kind that has been surveyed?

A. 24. I can name one, yes, sir, that is a good deal like, the N. $\frac{1}{2}$ of section 25 is the same.

Q. 25. Can you name any other tracts?

A. 25. I don't know that I can.

Q. 26. How much of the north half of 25 contains the same growth of small cypress that is to be found upon the lands mentioned?

A. 26. I should suppose about 50 acres.

Q. 27. That is a slash that runs along the high lands is it not?

A. 27. Yes, sir, that is it is higher than the slash itself.

Q. 28. Taking the north half of 25 as a whole, how does it compare in height to the land east of the line that we have drawn through the lake?

93 A. 28. Taking it as a whole it is higher.

Q. 29. How much higher?

A. 29. I could not say.

Q. 30. Has any additions been made to the ridges that you mentioned in your testimony since you first became acquainted with it?

A. 30. None to amount to anything.

Q. 31. If you have noticed any changes in height or breadth, will you state what it has been?

A. 31. Well, I suppose it has built up some like the other lands. It would naturally build up from the falling leaves, etc.

Q. 32. And would the ridge become proportionately wider as it become higher?

A. 32. Well it might.

Q. 33. How many years since you became acquainted with the lands east of this line we have drawn, could this land have been cultivated with crops of cotton?

A. 33. I could not say. It would have to have been cleared first and that would have made a great deal of difference as far as the water was concerned.

Q. 34. State as near as you can each of those years?

A. 34. I couldn't do it.

Q. 35. State when those lands could last have been cultivated had they been cleared?

A. 35. Not over two or three years ago.

Q. 36. How many years of those twenty four years of your acquaintance would those lands have permitted cultivation?

A. 36. I could not say. Perhaps three or four. Clearing lands make a great difference. I know some lands here in this country equally as low as that that are in cultivation. They do not get a crop on them every year.

JOHN R. BUCK.

94

Deposition of James Hickman.

Q. 1. What is your name, age and residence?

A. 1. James Hickman, age 65 live near Huffman, Arkansas.

Q. 2. How long have you lived in this neighborhood?

A. 2. All of my life.

Q. 3. Are you familiar with Walkers Lake and the land surrounding the lake?

A. 3. Yes, sir.

Q. 4. How long have you known it?

A. 4. Since I was a boy.

Q. 5. Can you remember Walkers Lake and the land surrounding it as far back as the breaking out of the Civil War?

A. 5. Yes, sir.

Q. 6. What is the shape of Walkers Lake now?

A. 6. It is long.

Q. 7. About how long is the lake?

A. 7. I really don't know I suppose it must be about 3 miles long.

Q. 8. Do you know where the farm is belonging to Capt. Rogers, in Sec. 35?

A. 8. I think so.

Q. 9. How far is it from that farm west to Walkers Lake?

A. 9. I should think it was a half or three quarters of a mile.

Q. 10. If you should go due south how far would you have to go until you could strike the lake, if you would strike it at all?

A. 10. You would strike it about Sandy Slough about 3 miles below.

Q. 11. Do you know where Click Huffman's farm is?

A. 11. I do.

Q. 12. Starting from Click Huffman's farm how far would you have to go to strike the lake?

95 A. 12. I think about a half or three quarters of a mile.

Q. 13. What do you think would be an average width for the lake?

A. 13. I hardly know.

Q. 14. Is it wider or narrower as you go south?

A. 14. It is narrower.

Q. 15. Starting from Esq. Huffman's field, the west side of it, in Sec. 30 and going back due west to the lake, what kind of land would you cross?

A. 15. Some of it is pretty high land.

Q. 16. What kind of timber has it on it?

A. 16. Well cottonwood, sycamore and some cypress.

Q. 17. Are there any ridges between Esqr. Huffman's field and the lake?

A. 17. Yes, sir, there is one pretty high ridge there.

Q. 18. Has there been any material change in the bed of Walkers Lake since you have known it?

A. 18. No, sir, there has not been. The lake is growing up some, but the bed of the lake has not changed.

Cross-examination:

Q. 1. When were you last upon Walkers Lake?

A. 1. It has been eight years ago since I was on this part of it.

Q. 2. When were you upon the other part of it?

A. 2. I have been around Sandy Slough in the last week or two.

Q. 3. How often on an average have you been upon the lake each year since you became acquainted with it?

A. 3. I have been around Sandy Slough once or twice a year.

Q. 4. In what part of Walkers Lake is Sandy Slough?

A. 4. In the south part of it.

Q. 5. Did you notice any ridges of high land covered with a heavy growth of timber in Sandy Slough as you passed through it?

96 A. 5. Yes, sir, there has been.

Q. 6. How many ridges of heavy timber did you observe in Sandy Slough the last time you passed through it?

A. 6. There is one ridge on this side of Sandy Slough and one on the other.

Q. 7. How wide is Sandy Slough?

A. 7. It is 50 or 60 yards wide where the road crosses it.

Q. 8. It will average 60 yards wide from one end to the other will it?

A. 8. Yes, I think so.

Q. 9. Have you ever heard of a Government meandered line around the lake?

A. 9. I don't know that I have.

Q. 10. Did you ever see a map showing the boundaries of Walkers Lake?

A. I have but I can't read and did not understand it much.

Q. 11. Do you know the location of Sec. 25, T. 16, R. 12?

A. 11. No, sir.

Q. 12. Do you know the location of the range lines between range-12 and 13 in T. 16?

A. 12. Well I kinder know them.

Q. 13. How near to the school house does it strike the river?

A. 13. About 250 yards east of the school house.

Q. 14. What year was you first upon Walkers Lake?

A. 14. I could not say ever since I was a boy.

Q. 15. Did the water extend any farther east than it does now?

A. 15. Yes, sir, there was no levee then and the lake would fill up and come this way farther.

Q. 16. Before the building of the levees the waters of this lake in any ordinary — extending out to the high land did it not?

A. 16. Not to the high lands but to the ordinary high lands.

97 Q. 17. And at that time the water extended at an ordinary year up to this Click Huffman place did it not?

A. 17. Up to the low edge of it.

Q. 18. What sort of banks has this lake are they high or sloping?

A. 18. I would call them sloping.

Q. —. And at that time the water would extend to the lower edge of the Huffman place over to the other side did they not?

A. —. Yes, sir.

Q. 20. Since the levees was built along the banks of the river the water has been gradually disappearing, and is now confined to a smaller area is it not?

A. 20. Yes, sir, because there is not so much water.

Q. 21. And the effect of that is that the waters of Walkers Lake is drying up is it not?

A. 21. Yes, sir.

Redirect examination:

Q. 1. You are familiar with the unsurveyed lands that have been surrounded with wires in the last ten years around Walkers Lake are you not?

A. 1. Yes, sir.

Q. 2. What is the nature of the lands surrounded by these wires are they high or not?

A. 2. It is about like other lands in this community.

Q. 3. State whether or not there is a ridge running north and south between Esq. Huffman's field and Walkers Lake, covered with cottonwood and other high timbers?

A. 3. Yes, sir, there is.

Counsel for defendant objects to the foregoing question because it states facts and indicates to the witness the answer desired.

98 Q. 4. When was the first time you remember being upon this ridge?

A. 4. When I was a small boy before the war. It has been there ever since I can remember.

Q. 5. Is there any lake between that ridge and the river?

A. 5. No, sir.

Q. 6. You spoke of the water coming up to the Click Huffman field, do you mean that Walkers Lake extended up to the field or that there was a slash running up there?

A. 6. It was a slash like it was not the main lake.

Q. 7. How does the present Walkers' Lake compare with the Walkers Lake you knew 25 or 30 years ago during an ordinary season when there was no overflow?

A. 7. The lake is just the same size.

Q. 8. Mr. Driver asked you certain questions with regard to the location of township and range lines, state whether or not you know anything about township and range lines?

A. 8. No, sir, I do not.

Recross-examination:

Q. 1. Whom did I understand you to say wired in a portion of the lands around this lake?

A. 1. I don't know, sir.

Q. 2. Were the lands around which the wires were run a portion of the lake?

A. 2. They had been.

Q. 3. Were they lands formerly covered by water?

A. 3. They had been.

Q. 4. About how many acres of land is embraced in the ridge you mentioned?

A. 4. I don't know.

Q. 5. Was it or not a narrow tongue of land?

99 A. 5. I don't know, sir, I did not pay much attention to it.

Q. 6. About how wide is that ridge on an average?

A. 6. I don't know I guess it is about $\frac{1}{2}$ mile in places.

Q. 7. About how long is it from the north to south?

A. 7. I don't know I guess three or four hundred yards long.

Q. 8. Is the cypress growth on the ridge promiscuous?

A. 8. It is scattered about some cottonwood and some sycamore.

Q. 9. You say it is a ridge, you mean by that that in comparison with the lands immediately around it in the lake it is higher and has the appearance of a ridge, and you did not use the word in comparison with the high lands near the river?

A. 9. No, sir, I do not suppose it was as high as this land out here.

Q. 10. Before the waters of the Mississippi River were excluded

from that lake this little ridge of higher land constituted a very small part of the lake did it not?

A. 10. I reckon so.

Q. 11. Are you familiar with that part of the lake lying near the lands of Esq. Huffman?

A. 11. Not as well as I am lower down.

Q. 12. Is it not a fact that there is a large amount of very low land lying immediately west of Esq. Huffman's?

A. 12. Yes, sir, I suppose so.

Q. 13. And between this high ridge of land in the lake and the high lands outside the lake there is a wide area of land covered with this cypress growth is there not?

A. 13. There is some I know.

Q. 14. Along this high jut of land you mentioned there are also numerous low places covered with small cypress is there not?

A. 14. I don't remember there are some low placed in there.

Q. 15. Prior to the building of the levees did you state that Walkers Lake as you knew it years ago an ordinary high
100 water would fill these low places would it not?

A. 15. Fill most of them but not all.

Q. 16. In answer to a question of Mr. Little's did you state that Walkers Lake contains the area of water now that it did fifty years ago?

A. 16. I mean that this lake is the same but not as much water in it.

Q. 17. Did you mean by that that the size of the lake has not changed any but that the water has?

A. 17. There is not as much water in the lake as there has been.

JAMES HICKMAN.

101

Deposition of Henry Paul.

Deposition of Henry Paul. Taken by Consent. All Formalities, Including the Signature of the Witness, Waived.

Q. 1. State your name, age, place of residence and occupation?

A. 1. Henry Paul, age 58 years, residence Huffman, Arkansas, occupation farmer.

Q. 2. Mr. Paul how long have you lived at Huffman, Arkansas?

A. 2. Twenty two years.

Q. 3. How long have you been acquainted with Walkers Lake and the surrounding country?

A. 3. 26 years.

Q. 4. Are you familiar with the contour of Walkers Lake and the surrounding country?

A. 4. I am familiar with the greatest portion of it.

Q. 5. Are you familiar with the lands that would be the south $\frac{1}{2}$ of Sections 25-36 & 32 if they were surveyed?

A. 5. Yes sir I would be especially familiar with the south $\frac{1}{2}$ of 25 and 36.

Q. 6. Do you know whether or not Walkers Lake covers a portion of the south $\frac{1}{2}$ of Sec. 25, T. 16, and range 12?

A. 6. No sir it does not cover any portion of it.

Q. 7. What is the nature of the land in the south $\frac{1}{2}$ of Sec. 25 in regard to its elevation?

A. 7. Some high and some low.

Q. 8. What portion is low and what portion is high?

A. 8. Along the lake and in the middle of the section is a high ridge, and on the east side it is low again. There is a swag on the east side.

Q. 9. What of the nature of the timber on the south half of section 25?

A. 9. Cypress, Oak, Elm, Hackberry, Ash, Cottonwood, Gum and Mulberry.

102 Q. 10. What can you say of the size of timber on that half section?

A. 10. A portion is large timber, and some small.

Q. 11. How does the timber on the south half of 25 compare with other high land timber in that community?

A. 11. Well a portion of the timber is as large as it is on high land.

Q. 12. How long have you known the south half of Section 25?

A. 12. About 24 years.

Q. 13. Has there been any change in this half section?

A. 13. I think not.

Q. 14. When you first knew the south half of Sec. 25 about 24 years ago, was there any indication that it had ever been a part of Walkers Lake?

A. 14. No, sir.

Q. 15. State whether or not the elevation of the land and the variety and size of the timber was about the same then as it is now?

A. 15. Well, in the swag east I believe it is a little filled up, but very little, and the ridge to my best knowledge is not filled up, of course some timber has brown and the largest of the big timber is cut out.

Q. 16. When was this cutting of timber done?

A. 16. The cypress has been cut there years ago, the biggest cypress has been cut from 18 to 20 years ago in the swaggs, and the cottonwood timber has been cut about 8 or 10 years ago.

Q. 17. What can you say of the size and apparent age of the cypress timber that was cut 18 or 20 years ago on this land?

A. 17. The biggest portion has been big timber, the stumps show it couldn't tell how old; there is some cypress there that is very big timber.

Q. 18. What can you say of the size of the cottonwood

103 timber that was cut 8 or 10 years, and the amount of it?

A. 18. In section 25 there was lots of timber cut, there has been timber cut four feet through, and there is still big trees standing there now.

Q. 19. State whether or not it is a heavy brake of timber?

A. 19. It was a heavy brake of timber especially 160 acres.

Q. 20. From your knowledge of the cypress trees in the slash that you speak of on the east side of section 25, state whether or not they were such trees as grow in lakes?

A. 20. In the slash east there is some big cypress and they look like they grew in water; they are short body trees, the majority is small timber.

Q. 21. Are you as familiar with section 36 as you are with the south half of 25?

A. 21. I think I am.

Q. 22. What can you say of the north half of section 36 T. 16 and range 12 as to the elevation of the land, the variety and size of the timber, or if any, how does it compare with the south half of 25?

A. 22. The north half of 36, a portion is low and a portion is high and on the east side the same cypress slash.

Q. 23. Does Walkers Lake as it now exists cover a part of the north half of section 36?

A. 23. Not that I know of.

Q. 24. What part of the north half of section 36 is high land and what part is low land?

A. 24. Along the lake is low land. The line of 36 doesn't run through the lake, but the west side of 36 is lower, in the middle it is high and the east side is low. It is just about the same as the south half of 25 as to the elevation of the land, and the variety and size of the timber.

104 Q. 25. Does the swag or cypress slash that you mentioned as being along the east side of the south half of 25 continue along the east side of the north half of 36?

A. 25. Yes, sir.

Q. 26. Does the ridge that you spoke of as being in the south half of 25 extend across the north half of 36?

A. 26. Yes, sir.

Q. 27. State whether or not there has been timber cut from the north half of 36, and approximate how long ago the cypress timber has been cut?

A. 27. From 15 to 20 years ago, and the cottonwood timber there well, some has been cut 5 years ago and some longer.

Q. 28. Was this cutting of timber confined to parties who claimed to own the land, or did the public generally enter upon the land and cut the timber?

A. 28. I think the timber was cut by parties that claimed the land.

Q. 29. Who cut the cottonwood timber in 25 and 36?

A. 29. The cottonwood timber in 25, Mr. Tipton bought it from Tom Cassidy and he had it cut.

Q. 30. Did Ash and Cassidy claim to own the land?

A. 30. They wired it up and claimed it as their land.

Q. 31. Did any of the present claimants of that land make any effort to stop the cutting of the timber, or did they stop it?

A. 31. No sir not on section 25.

Q. 32. Are you familiar with the south half of section 36?

A. 32. Yes sir.

Q. 33. Does Walkers Lake as it now exists cover any portion of the south half of section 36?

A. 33. Yes sir.

Q. 34. What portion?

105

A. The south west corner is in the lake.

Q. 35. Approximate the number of acres of the south west quarter that is in the lake?

A. 35. I couldn't tell exactly how much, but a right smart less than half of the south west half.

Q. 36. Does the ridge that you located in section 25 and the north half of 36 extend into the south half of 36?

A. 36. A portion of it does and a portion of it does not.

Q. 37. Are there any high land timber, such as Cottonwood, Oak, Hackberry and Elm in the south half of 36?

A. 37. Some cottonwood there.

Q. 38. I will ask you if you knew of a large cottonwood tree in the south half of 36, standing near the present shore of Walkers Lake, which has been known as the old landing tree?

A. 38. Yes, sir.

Q. 39. Is that tree still standing?

A. 39. I couldn't tell I have not been there for over a year.

Q. 40. When did you first notice that cottonwood tree?

A. 40. Years ago. I have been trapping on the lake and hunting and have been fishing there a good many times, the first time was ten or twelve years ago, or longer than that, the first time must have been about 15 or 16 years ago.

Q. 41. What of the apparent age and size of that tree 15 or 16 years ago?

A. 41. That is a very old tree.

Q. 42. About how large was it?

A. 42. It must have been 3½ or 4 feet through.

Q. 43. When you first knew Sec. 36, 24 years ago, was there any indication that a greater portion of it had ever been in Walkers Lake, than that portion which is now in the lake?

106 A. 43. I can't see any difference in the land, except in one corner of 36, there used to be a slough, and that filled up in the '82 water, that is all the difference I can see.

Q. 44. Are you acquainted with the east half of section 32?

A. 44. I am acquainted with it, but not 20 years ago; I have been over there but not much. I couldn't tell anything about it 20 years ago.

Q. 45. How does it compare as to elevation and the timber with the south half of 36?

A. 45. Mostly cypress, some few cottonwood, but they are few. I consider it not very low and not high land.

Q. 46. How does it compare with the surrounding surveyed land to the north of it?

A. 46. It is a little lower.

Q. 47. Is the S. E. ¼ of 32 similar to the E. ½ of 32?

A. 47. That is higher.

Q. 48. State whether or not there has been timber cut from this land years ago?

A. 48. Yes, sir.

Q. 49. How long ago?

A. 49. Well I remember 24 or 25 years ago, there was some timber cut there, lots of it.

Q. 50. Now Mr. Paul has the slough or cypress brake that you mentioned as being located along the east side of 25 & 36 any connection at either end, or in any way with Walkers Lake?

A. 50. Not since I have known those lands.

Q. 51. Was it a part of Walkers Lake when you first knew it?

A. 51. No sir.

Q. 52. Does Walkers Lake proper touch any part of Sec. 32?

A. 52. I am not familiar with the survey of 32, but I think the south west corner is in the Lake.

Q. 53. Are you familiar with Sec. 31?

107 A. 53. No, sir.

Q. 54. No part of it?

A. Yes, sir I know where it is, but I don't know where the lines are.

Q. 55. How does it compare the part of it you know, as to the elevation of the land and the nature of the timber with the south half of 36?

A. 55. Well, I would call it low land, not very low, but I call it low land; it is not as low as the south half of 36, I consider that low land, but not so low as the slashes.

Q. 56. What is the average width of Walkers Lake, beginning at the south west corner of Sec. 24 and reaching to Sandy Slough?

A. 56. At Sec. 24 it is narrow, about $\frac{1}{2}$ quarter, at Sec. 25 it is from a quarter to $\frac{1}{2}$ mile and Sec. 36, $\frac{1}{2}$ mile.

Q. 57. Does it terminate at Sandy Slough?

A. 57. Yes sir.

Q. 58. Was this lake when you first knew it 24 years ago, about the same size and shape that it is now?

A. 58. Yes sir, except the bushes.

Q. 59. What do you mean?

A. 59. Well, along the lake some small cottonwood and willows and in the middle of the lake is a lot of bushes.

Q. 60. Is Walkers Lake a continuous body of water the entire year or does it go dry during dry seasons?

A. 60. It goes dry during dry seasons.

Q. 61. Has it always done so since you have known it?

A. 61. No sir, well I have seen it dry in the fall, about 12 years ago I saw it pretty near dry, except in water holes.

Q. 62. Have you seen it dry since that time?

A. 62. Yes sir.

Q. 63. How often?

108 A. 63. I couldn't tell exactly how many times, I have seen it dry all over the lake.

Q. 64. How far is Walkers Lake west of the western line of Sec. 36?

A. 64. I think it from $\frac{1}{2}$ of a mile to $\frac{3}{4}$ of a mile.

Q. 65. Isn't it about the same distance from the western line of the south half of 36?

A. 65. No, sir.

Q. 66. How far is it west of that line?

A. 66. I couldn't tell exactly but I believe it is over a quarter.

Q. 67. During the last 20 years how far have you lived from Ealkers Lake?

A. 67. About three miles.

Q. 68. What occasion have you had to be on the lands that you have testified about?

A. 68. 23—24—25 years ago I hunted on the lake, hunted 'coons there and had a shanty there. That was 23—24 & 25 years ago.

Q. 69. At what point on the lake was your shanty built?

A. 69. In Sec. 24.

Q. 70. And at that time you say you hunted over the lake and these lands?

A. 70. Yes, sir.

Q. 71. What occasion have you had in years since that to be on this land?

A. 71. Hunting cattle and horses.

Q. 72. Do you mean that when your cattle or horses were out you would go there to hunt them?

A. 72. I look after my cattle and horses occasionally.

Q. 73. Was this where they ranged?

A. 73. Yes, sir.

109 Q. 74. Have you had occasion for this purpose to go into these lands often or not?

A. 74. Nearly every trip I go after cattle. In time of water they go up on those ridges and I go there to find them.

Q. 75. Was the ridges in 25 and 36 high enough to afford protection to cattle from the high water of the overflow?

A. 75. Not all the time.

Q. 76. To what extent did it afford such protection in times of overflows?

A. 76. Before the levee was put up the water covered the ridges.

Q. 77. Before the levee was put up in times of overflows the river covered all the lands in that vicinity, did it not?

A. 77. Some portions of it.

Q. 78. Were those ridges that you located in 25 and 36 out of the water entirely and the surrounding territory under water?

A. 78. Yes, sir.

Q. 79. And you say that it was upon these ridges at such times that you went to find your cattle?

A. 79. Yes sir.

Q. 80. Does Walkers Lake empty into Bufords Lake?

A. 80. Yes sir through a slough.

Q. 81. What is that slough called?

A. 81. Sandy Slough.

Q. 82. In times of overflows, before the levee was built, did Walkers Lake fill up with water from the overflows from the river?

A. 82. Yes, sir.

Q. 83. Now as I understand you it is protected by the levee?

A. 83. Yes sir.

Q. 84. Was Walkers Lake ever at any time a navigable lake?

A. 84. No sir.

110 Cross-examination.

Q. 1. What do you mean when you speak of Walkers Lake?

A. 1. I mean it as I first knew it.

Q. 2. Did you know anything about the condition of Walkers Lake in 1847 when it was surveyed by the United States Government?

A. 2. No, sir.

Q. 3. Do you know how the bank meandered around the lake at that time?

A. 3. No, sir.

Q. 4. How do you know the location of section 25 and 36 in 16 12 and 31 and 32 in 16—13 have you ever seen them surveyed?

A. 4. I helped survey a portion of the land in Sec. 25.

Q. 5. When?

A. 5. 10 or 12 years ago.

Q. 6. Where are these cypress brakes that you speak of?

A. 6. In section 25 east and west.

Q. 7. Are there any cypress brakes in 36?

A. 7. Yes, sir.

Q. 8. What portion?

A. 8. East and west and a portion of the south half of 36 is cypress brakes.

Q. 9. Do you know of any cypress timber standing along on the west side of the original surveyed lands in 30 and 31 in 16, 13 and in the south half of 25 in 16—12?

A. 9. Yes sir.

Q. 10. What is the character of that cypress in section 25?

A. 10. There is some big timber there, but the largest portion is small; some big timber in sec. 25 and in 30 it is mostly all small timber, not much big timber; in 31 the big timber had all been cut out, there was a right smart big cypress, but now it is small cypress.

111 Q. 11. Is it not a fact that the big cypress timber in the south half of 25 and on the south west side of 30 and 31, was this big cypress at the bottom and run up small above?

A. 11. No, sir.

Q. 12. What kind of cypress was it?

A. 12. In section 25 I made boards 20 years ago, out of tall trees, swell butted, about four feet high.

Q. 13. That was the condition of the cypress both in 30, 25 & 31?

A. 13. Yes sir; swell butted running about 4 feet high.

Q. 14. There has been something said about a ridge running

down through a portion of the center of this lake, do you know anything about it?

A. 14. Yes, sir it runs from section 24 to 25 into 36.

Q. 15. As you knew Walkers Lake 24 or 26 years ago was a portion of the lake according to your knowledge of the condition of the lake, north and east of that ridge?

A. 15. Not east that I knew of.

Q. 16. Then, you wouldn't state that the ridge according to your recollection was north and east of the bank of the lake?

A. 16. It was south and west.

Q. 17. Do you mean to say that your knowledge of Walkers Lake as you first came to know it 26 years ago, covers only the same area, as Walkers Lake existed when it was originally surveyed by the United States Government?

A. 17. I believe the lake 25 or 26 years ago the same as it is now.

Q. 18. Do you mean to say that the lake as you knew it, was the same as the lake was 60 or 70 years ago?

A. 18. I don't know how it was 60 or 70 years ago?

Q. 19. Did the lake ever go dry before the levee was
112 built?

A. 19. I saw it pretty near dry before the levee was built.

113 *Deed from Board of Directors St. Francis Levee District to Joanna Little.*

Know all men by these presents: That board of Directors St. Francis Levee District, a body politic and corporate, created by the General Assembly of the State of Arkansas under the Act which became a law on the 15th day of February, A. D. 1893, for and in consideration of the sum of Three Thousand Seven Hundred and Fifty (\$3750.00) Dollars to the Board of Directors St. Francis Levee District cash in hand paid by Joanna Little the receipt of which has been duly certified by the Treasurer of said Board of Directors St. Francis Levee District to the President thereof has granted, remised and quit claimed, and does by these presents release, remise and quit claim unto the said Joanna Little and unto her heirs and assigns forever, all of the right, title and interest of said body politic and corporate in and to the following described real estate lying, being and situate in the County of Mississippi and State of Arkansas to-wit:

The south half of section twenty five containing 300 & 92/100 acres, and all of section 36 containing 640 acres, and both in township sixteen north and in range twelve east. Also the west half of section 31 containing 320 acres, and the south east quarter of section 31 containing 160 acres, and both in township sixteen north range thirteen east. And containing in all 1420.92 acres. (S. 1/2 of Sec. 25. All Sec. 36, T. 16 N. R. 12 E. Also W. 1/2 Sec. 31, and S. E. 1/4 Sec. 31, T. 16 N. R. 13, E. containing in all 1420.92 acres.

To have and to hold the same unto the said grantee her heirs and assigns forever.

In witness whereof, the name and style of said body politic and corporate is hereto subscribed and affixed, attested by its seal on this 11th day of March 1903.

THE BOARD OF DIRECTORS ST. FRANCIS
LEVEE DISTRICT,

By O. N. KILLOUGH, *President*.

Attest:

HUGH R. McVEIGH, *Secretary*.

114 STATE OF ARKANSAS,

County of Pulaski:

On this day before me, the undersigned, a duly commissioned, qualified and acting Notary Public within and for the County and State aforesaid, personally came and appeared O. N. Killough, President Board of Directors St. Francis Levee District to me personally well known to be the same person whose name appears subscribed to the above and foregoing deed of conveyance and he acknowledged, that as President of the Board of Directors St. Francis Levee District he executed the same in the name of said body politic and corporate for the purposes and considerations therein mentioned and set forth; and he desires the same certified, which is hereby accordingly done.

In testimony whereof, I, as such Notary Public aforesaid, hereunto set my hand and official seal on this the 11th day of March A. D. 1903.

RUFUS H. MILL,

Notary Public.

My Commission expires 13th day of January, A. D. 1904.

STATE OF ARKANSAS,

County of Mississippi:

I, J. W. Rhodes, Clerk of the Circuit Court and Ex-Officio Recorder for the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 17th day of March, 1903, and the same is now duly recorded, in Record Book of Deeds, Volume 3 pages 76 & 77.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 18th day of March 1903.

J. W. RHODES, *Clerk*.

By C. L. MOORE, *D. C.*

115

Receipt.

MEMPHIS, TENN., Mar. 9, 190—.

Received from Joanna Little Ten Dollars part purchase price of S. $\frac{1}{2}$ 25 & All 36 T. 16, N. R. 12, E. and W. $\frac{1}{2}$ & S. E. $\frac{1}{4}$ Sec. 31 T. 16, N. R. 13, E. 1420.92 acres

H. R. McVEIGH,

Sec'y St. Francis Levee Board.

\$10.00.

Purchase Price \$3750.00.

116

Exceptions by Defendants.

JOANNA LITTLE, Plaintiff,

vs.

J. J. WILLIAMS et al., Defendants.

Comes defendants and excepts to the introduction of the deed from the Board of Directors St. Francis Levee District to Joanna Little and for grounds therefor states that said deed fails to describe lands in existence and because such lands as S. $\frac{1}{2}$ Sec. 25 all of section 36 township 16 north and in range 12 east and section 31 township 16 range 13 are in esse in Mississippi County, Arkansas.

S. S. SEMMES &
DRIVER & HARRISON.*Att'y- for Defendants.*

117

Deposition of E. M. Huffman.

Deposition of E. M. Huffman taken by consent before W. D. Gravette Notary Public in the office of Armstrong & Gravette on the 7th day of October, 1904. To be read in evidence in behalf of defendants in the case of Joanna Little vs. J. J. Williams et al. now pending in the chancery court Chickasawha District of Mississippi County, Ark. All exceptions and irregularities captions and certificates being waived except for competency and irrelevancy.

E. M. HUFFMAN being duly sworn deposeth as follows:

Q. 1. State your name, age, residence and occupation?

A. 1. My name is E. M. Huffman, I am 50 years old, reside at Huffman, Arkansas, and am a farmer.

Q. 2. What interest have you in this suit?

A. 2. I am one of the defendants.

Q. 3. Are you acquainted with what is known as Walkers Lake in township 15 & 16 N. R. 12 East and Township 15 & 16 N. R. 13 East, Mississippi County, Arkansas, and if so how long have you known it?

A. 3. I am, ever since I have been large enough to remember.

Q. 4. Were you reared in the neighborhood of this lake?

A. 4. I was.

Q. 5. What was the condition of this lake when you first knew it as to water upon it and about what was the average depth of the water?

A. 5. It was a lake covered with water and except during times of an overflow from the river it was covered with water on an average of from one to four feet.

Q. 6. Was it such a lake as was capable of being navigated by steamboats or other commercial crafts?

A. 6. It was not.

Q. 7. You have stated that the average depth was from one
118 to four feet was there any outlet from the river by which vessels could get into it?

A. 7. No sir.

Q. 8. What was its condition as to trees and undergrowth?

A. 8. There was some trees in it and it was grown up with undergrowth.

Q. 9. What is the present condition of this lake as to water upon it?

A. 9. Ordinarily it is dry land.

Q. 10. Is it sufficiently dry to be susceptible of cultivation?

A. 10. Most of it is in such condition.

Q. 11. What is its condition as compared with the surrounding swamp lands?

A. 11. Some of it is like the surrounding land some of it is lower.

Q. 12. Do you know the location of this land for which this suit has been brought the land that would be in sections S. 1/2 Sec. 25 and all Sec. 36 T. 16, R. 12 and Sec. 31 T. 16, R. 13 if surveyed?

A. 12. I do.

Q. 13. What is the condition of these lands as being now covered or uncovered by water?

A. 13. Ordinarily they are uncovered by water and are dry.

Q. 14. How is this land situated as to the adjoining lands riparian on the north, to-wit: in Sec. 25 & 36 T. 16 R. 12 and Sec. 31 T. 16 R. 13?

A. 14. There is no water in between these lands and the riparian lands and they are joined on to them all the way across.

Q. 15. How has the uncovering of this lake been and the drying up of the water taken place has it been sudden or gradual?

A. 15. It has been slowly and imperceptibly drying up for a number of years.

119 Cross-examined by Attorneys for Plaintiff:

Q. 1. You have stated that you have known this lake from the time you were old enough to remember, how long have you been familiar with the meander lines of this lake as shown on our map?

A. 1. I have been familiar with this lake as a body of water ever since I could remember, and with the meandered lines adjoining my land for 30 years and the other lines for at least 20 years.

Q. 2. How did you learn the location of these meandered lines?

A. 2. By being with surveying parties when they would strike the line and from the field notes now in my possession and from being told about the location by the surveyors.

Q. 3. What lands have you helped to survey joining Walkers Lake?

A. 3. I have helped to survey some in Section 25, some in 30 and some in 31 and 32.

Q. 4. Do you own lands abutting on the meandered lines of Walkers Lake?

A. 4. I do. I own lands in Sec. 30 & 31.

Q. 5. How does the meandered line of Walkers Lake cross Sec. 30?

A. 5. It runs across the S. W. $\frac{1}{4}$ of Sec. 30.

Q. 6. Do you own the surveyed lands in the S. W. $\frac{1}{4}$ of sec. 30?

A. 6. Me and my brothers and sisters do.

Q. 7. How much surveyed land in the S. W. $\frac{1}{4}$ of Sec. 30?

A. 7. About 70 acres.

Q. 8. How much of the unsurveyed land in Walkers Lake do you claim under the decree of the Chancery court by reason of owning that 70 acres abutting on the meandered line?

A. 8. We got the balance of the S. W. $\frac{1}{4}$ of Sec. 30 and the W. $\frac{1}{2}$ of Sec. 31 making all together in the neighborhood of 410 acres.

Q. 9. Do you own any other lands abutting upon the meandered lines of Walkers Lake, if so where?

120 A. 9. I own an interest in the frl. N. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of Sec. 31.

Q. 10. By reason of that land abutting upon the meandered line how much of the unsurveyed land do you claim?

A. 10. I do not know how much I think there is about 60 acres of it.

Q. 11. Do you claim any other ac-retion lands by reason of owning the abutting lands that are surveyed?

A. 11. I do not.

Q. 12. Is all this land timbered and is it susceptible to cultivation?

A. 12. It is all timbered unless it is some small placed in the S. W. $\frac{1}{4}$ of Sec. 31 and is all susceptible to cultivation in an average year.

Q. 13. What do similar lands in that vicinity when sold bring per acre?

A. 13. I should think that five or six or seven dollars would be a pretty good price.

Q. 14. How does this land compare with the surveyed lands adjoining the lake?

A. 14. About the only difference is that it holds rain water worse.

Q. 15. What would be the result of putting that land into cultivation?

A. 15. That would make a difference it would improve it.

Q. 16. Does what is known as Walkers Lake at the present time touch this land?

A. 16. I do not know, I consider all the unsurveyed land Walker Lake.

Q. 17. Have these lands in 31 been practically as they are now since you can remember?

121 A. 17. No sir it has gradually dried or filled up.

Q. 18. Might it not have been a fact that the annual overflow of the Mississippi River added to the volume of water that stood upon these lands?

A. 18. Yes these overflows filled it up and it took longer to dry up.

Q. 19. Now we will discuss the S. $\frac{1}{2}$ of Sec. 25 & 36 T. 16 R. 12, are you familiar with those lands?

A. 19. Well tolerable.

Q. 20. How long have you been familiar with those lands?

A. 20. About 25 or 26 years.

Q. 21. How do these lands compare with the unsurveyed lands in Sections 30 & 31?

A. 21. They are similar lands.

Q. 22. What is the nature of the timber on the S. $\frac{1}{2}$ of 25 and the N. $\frac{1}{2}$ of 36?

A. 22. On part of the S. $\frac{1}{2}$ of 25 and N. $\frac{1}{2}$ of 36 there are cypress, some cottonwood, some ash, some elm, willow & etc.

Q. 23. Is it not a fact that these lands are well timbered with all sorts of high land timber?

A. 23. It is pretty well timbered with the timber I have named.

Q. 24. What can you say of the size of the cottonwood and other timber on the tract?

A. 24. There are some good cottonwood on it. I do not remember there are any other large timber on it.

Q. 25. When was the bulk of this cottonwood cut off?

A. 25. In fall and winter of 1896.

Q. 26. Is there not cane on 25 and 36?

A. 26. There is none that I know of.

Q. 27. Did you ever know of any of this land when it stood under water the year around?

122 A. 27. I am satisfied that I have known the water to stand on these lands all the year unless it was a mighty dry year.

Q. 28. Do you know where the N. W. corner of the S. W. $\frac{1}{4}$ of 25 is?

A. 28. I do.

Q. 29. Starting west from there how far would you have to go to strike the bank of Walkers Lake as it now exists?

A. 29. I do not know how far it is.

Q. 30. Did you ever help run the line south from that corner?

A. 30. I have.

Q. 31. How far south did you run?

A. 31. I think we ran south a mile to the middle of 36.

Q. 32. When was that?

A. 32. It was in the summer of 1897 after the overflow.

Q. 33. Did you see anything of the open lake in running that line?

A. I do not remember striking any open lake running that mile.

Q. 34. Did you find any surface water on that land at that time?

A. 34. I think not.

Q. 35. Is it not a fact that starting at the N. E. corner of the S. $\frac{1}{2}$ of Sec. 25, and running in a southeasterly course along with the meandered line, there is a depression or cypress slough?

A. 35. There is.

Q. 36. Is it not a fact that piling and other timbers were cut from these unsurveyed lands in Sec. 31 for the market, fifteen or twenty years ago?

A. 36. There was some cut about 15 years ago.

Q. 37. About how many acres would you judge is now embraced in that part of Walkers Lake so designated in which water stands the year round?

A. 37. Very little, if any.

123 Q. 38. Has there been any ditches dug or other artificial drainage out of Walkers Lake?

A. 38. There has not.

Q. 39. Then so far as drainage is concerned Walkers Lake is in the same condition it was when you first saw it, is it not a fact that there is less water upon all lands in Mississippi County now than there was when you could first remember?

A. 39. Except the Lakes I do not know as it has.

E. M. HUFFMAN.

124

Deposition of George Buckner.

Deposition of George Buckner, Taken by Consent before W. D. Gravette, Notary Public, in the Office of Armstrong & Gravette on the 7th Day of October, 1904, to be Read in Evidence in Behalf of Defendants in the Case of Joanna Little vs. J. J. Williams et al., now Pending in the Chancery Court Chickasawba District of Mississippi County, Arkansas, All Exceptions and Irregularities, Captions, and Certificates Being Waived Except for Competency and Irrelevancy.

GEORGE BUCKNER being duly sworn deposeth as follows:

Q. 1. State your name, residence and occupation?

A. 1. My name is Geo. W. Buckner, I am 58 years old, live at Huffman, Arkansas, and am a farmer.

Q. 2. Are you acquainted with what is known as Walkers Lake in township 15 and township 16 in ranges 12 & 13 east in Mississippi County, Arkansas, and how long have you known it?

A. 2. I do, I have known it since 1854.

Q. 3. Was it a lake when you first knew it or not?

A. 3. It was, covered over with water.

Q. 4. Was the contour of the lake about like what it was, as surveyed by the U. S. Government?

A. 4. It was.

Q. 5. About what was the average depth of the water in the lake when you first knew it?

A. 5. I think the average depth was about four feet.

Q. 6. What was the growth in the lake?

A. 6. When I first knew it the growth was young cypress and willow.

Q. 7. Was it in a condition to be navigated by water craft of any size?

A. 7. It was not.

Q. 8. What is the condition of that lake now as to being a lake with water on it?

125 A. 8. There is no water on it as a lake except on the extreme west side.

Q. 9. How much water is there on the extreme west side of it?

A. —. Not very much not more than a strip of one hundred and fifty yards in width.

Q. 10. Is what was once the lake now so uncovered by water as

to be dry land all the way up to what was the bank or margin of the lake running along through the center of Sec. 25 T. 16 N. R. 12, the S. W. $\frac{1}{4}$ of Sec. 30 and the N. E. $\frac{1}{4}$ of — 31 T. 16 R. 13 the lands owned by the Williams estate, E. G. Sugg, Capt. Rogers and the Huffmans?

A. 10. It is.

Q. 11. How long has the water on this lake been drying up?

A. 11. It has been gradually filling up since 1860.

Q. 12. How has it been drying up?

A. 12. It was caused by the sediment caused by the overflow from the river.

Q. 13. Have you been down in through what was that lake since it has dried up?

A. 13. I have.

Q. 14. State whether or not in starting from what was originally the south bank of the lake from any point so as to go through the center of the lakes and going to what is the north bank of the lake did you go all the way over dry land or would you have to cross water?

A. 14. There is no water in there but it was muddy I mean by muddy it was soft caused by the sediment being deposited there.

Cross Examination waived by Att'y for Plaintiff.

GEORGE W. BUCKNER.

126

Deposition of J. T. Bracken.

Deposition of J. T. Bracken, Taken by Consent, All Formalities, Including Signature of the Witness, Waived.

Deposition for Defendants.

Q. 1. State your name, age, residence and occupation?

A. 1. My name is J. T. Bracken, I live at Huffman, Arkansas, occupation farming and I was born in 1842.

Q. 2. How long have you lived at or near Huffman in this county?

A. 2. Well I have lived right close to Huffman about 12 years.

Q. 3. Are you acquainted with what is known as Walkers Lake, the lake that is involved in this law suit?

A. 3. Yes sir, I am.

Q. 4. State when you first knew Walkers Lake?

A. 4. About 1858.

Q. 5. State what was the extent of your knowledge of Walkers Lake?

A. 5. Well Walkers Lake those days was about the size of the way it is surveyed out on this map, it reached right to the Huffman farm.

Q. 6. Did you ever have occasion in '58 to go around or about Walkers Lake, in other words how did you derive your knowledge as to the condition?

A. 6. I hunted all over it.

Q. 7. And you say at the time you knew it in 1858, it was about

the size and shape, as it is layed down on this map, that you hold here?

A. 7. Yes sir.

Q. 8. How did the east bank or margin of that lake run relative to the original land, that was occupied by the Huffmans?

A. 8. It run along about where the farm is cleared up now, it was covered up with cane from one end to the other.

127 Q. 9. What was the condition of the growth along the bank of that lake as to cane and timber?

A. 9. It was covered up with cane, except a little further near where Hatfield lived.

Q. 10. What kind of timber was there?

A. 10. All kinds.

Q. 12. Was there any cypress timber?

A. 11. No, sir, except right along the edge and the center of the lake.

Q. 12. What kind of timber was it as to the character of the growth?

A. 12. Right around the bank was swell butted timber out in the lake it was scrubby it was a little different it was not so swell butted.

Q. 13. In what kind of land does that swell butted cypress timber grow?

A. 13. I don't know I never saw it grow except in the edge of the lake.

Q. 14. Do you know where those cypress brakes are that have been testified to?

A. 14. So far as the commencing lines are concerned I don't know where it is, but it is all in Walkers Lake.

Q. 15. How does that timber that is testified to, stand relative to what was Walkers Lake when you knew it?

A. 15. This small timber wasn't there.

Q. 16. You don't understand my idea, I want to know where this timber stood?

A. 16. It stood right in the lake.

Q. 17. Did you ever go across that lake from the east bank to the west bank when you knew it in '58?

A. 17. I went it many times.

128 Q. 18. How did you go?

A. 18. In a boat.

Q. 19. Now state whether in going across that lake you crossed the widest part from the south bank to the north bank, when the water was over the lake, and whether or not you crossed any high land?

A. 19. No, sir, I never crossed any high land in going across there; that was in '64. There used to be some little donicks there, some three or four, but I could paddle my boat right through them.

Q. 20. When you knew the lake in 1858, was there any high land running through the lake, except the donicks you speak of?

A. 20. No, sir.

Q. 21. What was the size of those donicks?

A. 21. I couldn't tell you. In '64 I drug across the biggest one.

I was going over to a man by the name of H——, and I drug a boat across it, I suppose it was about 60 yards wide.

Q. 22. Were those donicks joined on to the main bank of the lake?

A. 22. No, sir.

Q. 23. Were those donicks you speak of joined on to the main shore of the lake, or were they entirely surrounded by the lake waters?

A. 23. One of those donicks might have been joined to the north bank in the south $\frac{1}{2}$ of 25. There was 3 of them.

Q. 24. Show now where those three donicks — you speak of, are located as nearly as you can by making a cross mark on the map?

A. 24. They were near the center of the lake; they were located in a string, lying down the center of the lake traveling south east.

Q. 25. Something is said in testimony in this case about a large cottonwood tree that stood on or near a road that was cut through the south half of 36.

A. 25. Yes sir I have seen it many times. It is near the middle of the lower part of the ridge.

Q. 26. How far was it from where that cottonwood tree stood to the north bank of the lake, as you then knew it?

A. 26. It was in the neighborhood of two miles, and they run pretty near through the center south of the Rogers place.

Q. 27. Now do you remember the circumstance of Mr. Huffman, one of the defendants in this suit, having a law suit with one Hatfield about cutting some cypress timber in a part of that lake?

A. 27. There was some talk of the law suit.

Attorney for the plaintiff objects to the question and answer.

Q. 28. Do you know where the timber is located?

A. 28. Yes sir it was right there where Huffman lives now.

Q. 29. Where Hatfield is living now, was that when you first knew the lake, or part of the land?

A. 29. It was part of the lake.

Cross-examination:

Q. 1. When did you first move to the neighborhood of Walker Lake?

A. 1. 10 or 11 years ago.

Q. 2. What has been your occupation since living in that vicinity?

A. —. Farming.

Q. 3. Do you own any land?

A. 3. No, sir.

Q. 4. Whose land do you now live upon?

A. 4. I live upon some of the Huffman land.

Q. 5. Are you related to the Huffmans?

A. 5. Yes, sir.

Q. 6. You have never owned any land in Mississippi County, Ark. have you?

130

A. 6. No, sir never owned a foot in the county.

Q. 7. Where did you live prior to your moving to that neighborhood?

A. 7. I lived at Cottonwood Point in Missouri, near there.

Q. 8. What was your occupation when you lived at Cottonwood Point, Missouri?

A. 8. Part of the time I was in the grocery business, and part of the time farming.

Q. 9. What do you mean by the grocery business?

A. 9. I was running a grocery store and a saloon combined, I sold all kinds of groceries.

Q. 10. Where did you live prior to moving to Cottonwood Point, Mo.?

A. 10. I lived in Tennessee, Dyer County.

Q. 11. You say that you first visited the neighborhood of Huffman in 1858, what was the occasion of your visit to that point?

A. 11. I was over there hunting.

Q. 12. How old were you at that time?

A. 12. 15 or 16 years old.

Q. 13. And you camped?

A. 13. Yes, sir.

Q. 14. Where?

A. 14. On the mounds.

Q. 15. How long did you remain there?

A. 15. We was there about one month.

Q. 16. What were you hunting?

A. 16. We were hunting coons and minks and anything we could kill.

Q. 17. Were you familiar at that time with the location of the section line in that vicinity?

A. 17. No, sir.

131 Q. 18. When did you next visit that neighborhood?

A. 18. Every year since, except one year, and I forget what year that was but it was in time of the war.

Q. 19. When did you first learn the location of section lines in the vicinity of Walkers Lake?

A. 19. I haven't learned them yet entirely, I never run a line in there.

Q. 20. You mean that you knew nothing about them until now?

A. 20. I know where the Huffman land is, and I know where the Hatfield land is, and can tell you anything about the location of the lake lines as to these farms, but don't know anything about the course of them.

Q. 21. When was you first upon the lands within the meandered line of Walkers Lake, and east of the present Walkers Lake?

A. 21. It was in '58, as I told you while ago that was the first time I was ever there in my life.

Q. 22. Have you been upon those lands mentioned in former questions frequently since you have lived at Huffman?

A. 22. Yes, sir.

Q. 23. You are now familiar with them are you?

A. 23. Yes, sir, I am familiar with the cypress lands that was called Walkers Lake, and also what is called Walkers Lake these days.

Q. 24. What is the average of Walkers Lake as it now exists?

A. 24. About one mile wide.

Q. 25. How many years Mr. Bracken has Walkers Lake been practically as it is at this time?

A. 25. Well, sir, only a few years. It has been just like it is now since '97, no change made, only grown up with timber and bushes.

Q. 26. What change was made in the Lake in '97?

A. 26. It filled up; the levee broke and the whole country filled up, whenever there is an overflow there is a little sediment.

132 Q. 27. Has this always been the case?

A. 27. Yes, sir.

Q. 28. Then it filled up the surrounding country did it not?

A. 28. Yes, sir, wherever there was a brisk current.

Q. 29. What other change did it make in the lake as to reference to the overflows of '97?

A. 29. It didn't make any that I know of.

Q. 30. Then with the exceptions of filling up from the overflows of '97, how long has the lake existed as it is now?

A. 30. Well, that is rather a hard question, because it changed every overflow, or it has ever since I knew it.

Q. 31. In times of overflows which lands filled up the most, the high lands or the low lands?

A. 31. Well, it depended on the current.

Q. 32. As a general proposition during times of overflows, which part filled up most?

A. 32. Low places filled up the most, because there was more current standing over it.

Q. 33. Then high places filled up very little did they?

A. 33. Well, if there was no current, they would fill all the way from one inch sometimes two and three inches.

Q. 34. Are you familiar with what would be the south $\frac{1}{2}$ of 25 if that section was surveyed?

A. 34. Yes, sir.

Q. 35. What is the nature of that land as to elevation and growth of timber upon it?

A. 35. Well, the best of my judgment it is kind of a level country you could not call it high or low.

Q. 36. Are you positive of that fact?

A. 36. Yes, sir, when there is no overflow this country don't cover up with rain water, but when there is an overflow and water
133 against the levee, although the levee does not break, the southwest $\frac{1}{4}$ of 25 is covered in rain and seep waters, most of it is covered in rain water and seep water.

Q. 37. Are you as positive of that statement as you are of all other statements you have made?

A. 37. Yes, sir, you can't ride 50 steps without getting into water.

Q. 38. What is the nature of the timber in that $\frac{1}{4}$ section?

A. 38. The majority is cottonwood and maple some oak and some gum.

Q. 39. Any Elm and Hackberry?

A. 39. Yes, sir.

Q. 40. Any cane?

A. 40. A little where I said that little donick stood from the main shore.

Q. 41. What can you say of the cottonwood timber as to its size?

A. 41. It is pretty good size timber.

Q. 42. Is it not an unusual heavy brake of cottonwood timber?

A. 42. No, sir, it was called a good brake of timber though.

Q. 43. Does the lake as it now exists touch any part of that quarter section?

A. 43. It will no more than hit it, if it does hit it.

Q. 44. When did you first observe that the lake did not cover any part of that $\frac{1}{4}$ section?

A. 44. I don't really know whether it touches it or not, it may run into it. I don't know; it seems to me that it is not over one half mile to the lake from the Rogers line.

Q. 45. How long has that land been practically as it is now?

A. 45. It has been that way I suppose 15 or 20 years, only building up a little as the overflows come.

Q. 46. You think also that each overflow shoves the ridge 134 further into the lake, do you?

A. 46. Yes, sir, it goes out further all the time.

Q. 47. I thought I understood you to say that the low places filled up faster than the high places?

A. 47. I suppose they did.

Q. 48. If that is still your impression that the low places fill up faster than the high places in the same amount of water, would that not have a tendency to crowd the lake out over the ridge?

A. 48. No, sir, because the majority of them are out in the lake, and the further it goes back the less it fills.

Q. 49. Are you familiar at the present time with the northwest $\frac{1}{4}$ of what would be 36?

A. 49. Yes, sir, I suppose I am. I know all that country, though I am not familiar with the sections?

Q. 50. Is any part of this section covered with Walkers Lake as it now exists?

A. 50. Well, yes, I reckon it would.

Q. 51. How much of it?

A. 51. I don't know how much there is; it looks to me like it would be a mile in the lake from the shape of the map.

Q. 52. What about the northeast $\frac{1}{4}$ of 36?

A. 52. Well, it wouldn't touch that I don't think at all; it would be partly on the edge of that ridge, and I think it would be laying in that flat between these donicks and the main bank.

A. 53. Is any part of the ridge that you mentioned in the northwest $\frac{1}{4}$ of 36?

A. 53. Well, there is about where it is.

Q. 54. You think part of the ridge is in the northwest $\frac{1}{4}$ of 36 do you?

A. 54. Yes, sir, I think it is.

Q. 55. How much of that northwest $\frac{1}{4}$ is ridge and how much is lake?

135 A. 55. Well, there would be very little of it ridge, only the northwest corner, and the rest of it would be lake and flat.

Q. 56. What part of the northwest $\frac{1}{4}$ of 36 do you think is in cypress timber?

A. 56. I think the southwest line.

Q. 57. How much of the northeast quarter of 36 is covered by the ridge?

A. 57. Well, it would be just a little off the southwest part of it possibly $\frac{1}{3}$ of it would reach up in what they call the ridge.

Q. 58. You think then about $\frac{1}{3}$ of the northeast quarter of 36 is on that ridge you mentioned?

A. 58. Yes, sir.

Q. 59. What is the balance of it?

A. 59. The balance of it would reach over in cypress timber between that and the main shore.

Q. 60. What is the nature of the timber on that ridge?

A. 60. The ridge, most of it is cottonwood timber, well most all timber, except there is no cypress.

Q. 61. What kind of timber do you find on the other part of the quarter section?

A. 61. Well, all of it is cypress, there may be some little ash.

Q. 62. Does the ridge that you mentioned extend south of the half section line of 36?

A. 62. It extends to the southeast quarter of section 36 it don't run straight.

Q. 63. Is this the same ridge you say you saw there in the form of donicks in 1858?

A. 63. Yes, sir, this is the same piece of ground.

Q. 64. How long has that land in 36 and 25, been as heavily timbered as it is now?

A. 64. Well, the cottonwood timber that is there has been 136 there a long time, because there is timber three and four feet through; and when you branch off into the cypress timber it hasn't been there so long it is not quite so large.

Q. 65. From your memory how has that land in there exclusive of the ridge been heavily timbered?

A. 65. Well, all this on each side of this ridge sprung up in there and grew up entirely since the year of '64; long about '64 these were saplings.

Q. 66. Do I understand you to say this ridge had cottonwood timber on it when you first knew it in '58?

A. 66. Yes, sir, it had some cottonwood timber on it then, but not so large as it is now; there was but very little timber on it in '58.

Q. 67. About when did you first observe the timber in these cypress slashes in 36 and 25?

A. 67. Well, long about '64 there was small saplings growing all along in these flats, and some big cypress trees two and three feet through.

Q. 68. Did you hunt over that land then?

A. 68. Yes, sir, I hunted in the lake, I never was on those donicks, I always followed the lake; I hunted around the lake.

Q. 69. During what season of the year was you on these lands?

A. 69. Well, I always went in the fall if I was coon hunting, and stayed on them pretty much all winter, and if I was hunting for summer ducks I was on them in August and Sept.

Q. 70. At that time was the Mississippi River leveed?

A. 70. It had, had a levee but the majority of it was all gone.

Q. 71. These lands were subject to a great many overflows were they not?

A. 71. Yes, sir, they overflowed most every overflow we had; all this lake country overflowed deep.

137 Q. 72. State whether or not those overflows left a great deal of water over the entire country in low places?

A. 72. There wasn't many low places them days, only what was called the lake, and the water would drain down to a certain state and stand there.

Q. 73. In other words the lake was supplied with its water from these overflows, was it not?

A. 73. Yes, sir, it was filled up every year by overflows.

Q. 74. What was the result upon these lands of building a levee?

A. 74. Well, it just kept the overflows out of them as long as the levee lasted; still it would overflow by rain water and seep water.

Q. 75. Are you familiar with the south one half of 36?

A. 75. Yes, sir, I am as familiar with that as any of it I suppose locating it is the trouble.

Q. 76. How much of the south half of 36 at the present time is covered by Walkers Lake?

A. 76. Well, this west quarter of it I suppose every bit of it is under water today, and something near one half of this other quarter.

Q. 77. What about the timber on the south half of 36, is it entirely covered by a growth of timber?

A. 77. No, sir.

Q. 78. What part of it is not?

A. 78. There is some of it that hasn't any timber but small willows.

Q. 79. Do you know where it is?

A. 79. No, sir, I can't locate it.

Q. 80. How wide is Walkers Lake at the S. W. corner of 36?

A. 80. Well, it is about one half mile I suppose.

Q. 81. Where is the outlet of Walkers Lake?

138 A. 81. Well, this day and time it is a place they call Sandy S-ough.

Q. 82. Does the present lake extend any further east or is it lower down than Sandy Slough?

A. 82. No, sir, the lake doesn't reach Sandy Slough, and doesn't extend any further east than Sandy Slough.

Q. 83. Has there been any timber cut on the south half of 25 and Sec. 36 since you have known that country?

A. 83. Well, yes, there has been timber cut on the edge of the ridge; there has been cottonwood timber cut there.

Q. 84. How long ago?

A. 84. Well, it has been cut there I suppose 5 or 6 years ago, as I understand the place.

Q. 85. Is it not a fact Mr. Bracken that people have cut timber within the meander line of Walkers Lake, with the purpose of marketing it and making boards?

A. 85. Pretty near it or a part of it I will say up to '66 I am satisfied there has been cypress timber cut there, but no other kind. In early days they did not fool with cottonwood trees, it was cypress altogether.

Q. 86. State whether or not cypress timber was cut and floated out of Walkers Lake by a resident of that community over 20 years ago?

A. 86. Yes, sir, it was.

Q. 87. What part of the lake was that timber cut?

A. 87. It was cut in what was called the lower part of it.

Q. 88. Is it not a fact that the heavy timber was cut off of Walkers Lake almost annually and floated off within the last 10 or 15 years?

A. 88. Well, I couldn't say that it was; it seems that the majority of the stumps show they were cut pretty much the same time.

139 Redirect examination:

Q. 1. You have stated in your cross examination that certain portions of what would be section 36 if surveyed are in the lake, and certain portions not in the lake, by using the word lake in connection with the question, what lake do you have reference to, the lake as it now exists, or the lake that existed when you first knew it?

A. 1. I have reference to the present lake what they call Walkers Lake now.

Q. 2. Now, when you first knew this lake in 1858 what portion was in the lake?

A. 2. Every portion of the 36 was in the lake when I first knew it.

Q. 3. How far north of 36 did the lake still extend?

A. 3. About two miles.

Q. 4. Then as a matter of fact, what would be section 36 when you first knew the lake, was located about the center of the lake wasn't it?

A. 4. A little on the west side.

Q. 5. Do you remember a mound known as the Petigo mound?

A. 5. Yes, sir.

Q. 6. Where was that mound?

A. 6. On the west side, on the main bank of the lake.

Q. 7. In starting from Petigo mound going in a northeastern direction, how far is it to the northeast bank of the lake?

A. 7. Something near two miles.

Q. 8. About what point would you have struck the northeast bank of the lake?

A. 8. About Captain Rogers deadening.

Q. 9. Do you know where the Williams land was located?

A. 9. I know where part of it is.

140 Q. 10. How did that land lay relative to the bank of the lake?

A. 10. Well, you see those days I did not know the Williams place.

141

Deposition of William Metzger.

Q. 1. State your name, residence, age and occupation?

A. 1. William Metzger, I am a farmer, my age is 55 years, and I reside at Hickman Bend, Arkansas.

Q. 2. How long have you lived in Mississippi County?

A. 2. I was born here.

Q. 3. Are you acquainted with what is known as Walker's Lake, the lake which is now in controversy between Joanna Little and Huffman and others?

A. 3. I am acquainted with Walker's Lake, I have been knowing it ever since '60.

Q. 4. What was the dimensions of the lake when you knew it?

A. 4. About 2 miles wide; I don't know how long.

Q. 5. I show you a map which is on file in this case supposed to be a map drawn from the original survey by the United States Government of Walker's Lake, please state from your recollection of this land when you first knew it as to whether the contours of the bank of the lake compare with the banks of the lake, as shown by this map?

A. 5. Yes, sir, it does.

Q. 6. Do you know of a mound known as the Petigo mound?

A. 6. Yes, sir.

Q. 7. Where was that mound?

A. 7. It lay in the N. E. $\frac{1}{4}$ of 35.

Q. 8. How far from the lake was it?

A. 8. About 100 yards.

Q. 9. In going from the N. E. $\frac{1}{4}$ of 35 to the other side of the lake, how far would you have to go across the lake?

A. 9. About two miles.

Q. 10. Do you know where the Huffman lands are?

A. 10. Yes, sir.

142 Q. 11. How does the east bank of the lake run relative to the Huffman lands?

A. 11. The Huffman lands lay on the bank of the lake.

Q. 12. Do you know where Hatfield lives?

A. 12. Yes sir.

Q. 13. Was that land a part of the lake?

A. 13. Most all of it was a part of the lake.

Q. 14. In what part of Mississippi County have you lived?

A. 14. I was born in Mississippi County and lived near the lake all my life.

Q. 15. Mr. Metzger when you say you have been familiar with this lake, do you mean by that, that you used to go out on it in a boat when you were a boy?

A. 15. Yes sir.

Q. 16. What did you go out on the lake for?

A. 16. Sporting.

Q. 17. Could you go all around in a boat?

A. 17. Yes, sir.

Q. 18. Was there enough water there to let you go around in a boat over the territory that you speak of?

A. 18. Yes sir.

Cross-examination:

Q. 1. Wherever you could go in a boat you called that the lake didn't you?

A. 1. Yes sir

Q. 2. Your idea of a lake is where there is water enough for you to go in a boat, is it not?

A. 2. Yes, sir, and around in the edge of the timber.

Q. 3. And your recollection now is that when you were a boy and for a good many years after that, you could go around in a boat on what you state is Walker's Lake?

143 A. 3. Yes, sir, several years afterwards I could go around in a boat over it.

Q. 4. Sometimes the water dried up so that you couldn't go in a boat over much of it, didn't it?

A. 4. No, sir, the lake stood full, tolerably full.

Q. 5. There were seasons of the year that the water was very much lower than other- wasn't it?

A. 5. Not until after the levee was built.

Q. 6. All of the territory you have mentioned, which you say is shown on the map stood full of water all the year round didn't it?

A. 6. Yes, sir, until the overflow filled it up.

Q. 7. It was all low ground filled with water wasn't it?

A. 7. Yes, sir, water stood four feet deep all in there.

Q. 8. Did the water cover the ground all the time so it was 4 feet deep all over it?

A. 8. No, sir, in the dry seasons it did not.

Q. 9. Now, I was asking you a little while ago, if in the dry part of the season the water was a good deal lower?

A. 9. Since the levee was built it is tolerably dry.

Q. 10. Since the levee was built you have seen it dry haven't you?

A. 10. Not exactly dry.

Q. 11. Has there been a heavy growth of timber on the lands outside of what is known as the lake at the present time?

A. 11. You might call it a big growth of timber.

Q. 12. Is it not a fact that a great deal of large timber of all kinds has been cut off of the lands?

A. 12. Not all kinds, Cypress has been cut off of the lake.

Q. 13. There never was any sort of timber, except cypress on these lands was there?

A. 13. Not that I have ever seen, there might have been a few ash.

144 Q. 14. Did you ever drive across these lands from the east side over to the lake?

A. 14. No sir, I have not, other people has.

Q. 15. Have you been on the land much in recent years?

A. 15. Yes, sir.

Q. 16. Did you use to go on the lands more than you have for the last 15 years?

A. 16. I have been on it more recently than I used to.

Q. 17. What is the opening from the south end of Walker's Lake?

A. 17. I would call it Willow Flat I wouldn't call it Sandy Slough at all.

Q. 18. In old times when you first knew it what part of it was you on most?

A. 18. On the south half of 6 I was there in a dug out and paddled up through the lake.

Q. 19. Then when you come back how would you come?

A. 19. I would come back to where I started.

Q. 20. Are you one of the parties to this suit?

A. 20. No, sir.

Q. 21. Are you claiming any of the lands, as you say was formerly in Walker's Lake?

A. 21. Yes, sir.

Q. 22. What part do you claim?

A. 22. The north west half of 5.

Q. 23. That was part of the land that was one time covered by the lake, wasn't it?

A. 23. Yes, sir.

Q. 24. Are you claiming now that that belongs to you, because the lake has gone off of it?

A. 24. Yes, sir.

145

Deposition of E. M. Huffman.

Q. 1. Are you acquainted with the location of the original Huffman lands as surveyed by the United States Government, and as entered from the State of Arkansas by your fathers and Thomas H. Ham, now claimed by your brothers and sisters by virtue of being riparian owners of which you are now claiming what would be all of section 31 and the S. W. $\frac{1}{4}$ of Sec. 30, in Twp. 16. N. and range 13 east, and part of what is known as Walker's Lake?

A. 1. Yes, sir.

Q. 2. Are you also acquainted with the lands in the north part of the S. W. $\frac{1}{4}$ of 25, known as the Williams land, and the lands in the N. E. $\frac{1}{4}$ of 25 T. 16, and Range 12 E. known as the Sugg and Rogers land?

A. 2. Yes sir I know them.

Q. 3. State when you first remembered Walker's Lake, how the north and east bank of that lake, that is the margin of the lake, ran relative to the original lands in 30 and 31 entered by your father and Ham, and the original land owned by William Sugg and Rogers?

A. 3. They was on the bank of the Lake.

Q. 4. What was the nature of the north and east margin or bank of that lake?

A. 4. You couldn't hardly tell, there was a bank there, but it was kind of a bluff bank.

Q. 5. What was the nature of the bank or margin of the lake on east and north side of the lake?

A. 5. You couldn't hardly tell it was kind of a flat gradual slope.

Q. 6. On which side was the bluff or high bank of the lake?

A. 6. What is called the far side I guess, it would be the south east there is a right smart bank.

146 Q. 7. So then as a matter of fact there was no bluff bank on the north and east side of the lake?

A. 7. No, sir.

Q. 8. Is it not a well known topographical fact in regard to the little rivers and bayous and lake in this country, that where there is a bluff bank on one side of the land or bayou the other side is low and flat?

A. 8. I am not very familiar with many of the lakes, but that is the case with Walker's Lake.

Plaintiff's counsel objects to questions and answers.

Q. 9. What was the growth along the north and east margin of the lake when you first knew it?

A. 9. It was swell butted cypress.

Q. 10. In what kind of soil does that swell butted cypress grow?

A. 10. I never saw it growing except in standing water.

Q. 11. There has been something said about a ridge, or some high land being in certain portions of what is claimed to have been originally Walker's Lake, state what you know about that ridge, or those high places, what was the nature of them, and in about what portion of the lake were they located?

A. 11. Well the highest part of the land was from the ventre line of 36 up to 25.

Q. 12. What was the size and condition of the high land?

A. 12. Well, if there wasn't much water in there it was known as high land.

Q. 13. When the lake got low how much was out?

A. 13. The lower it got, the more it would show out.

Q. 14. During the ordinary stages, or conditions of the water in that lake, not taking into consideration when the river was overflowed, and not taking into consideration when it was a very dry season, how much high land was in that lake out of water.

147 A. 14. When I first remember there was very little except when the water in the lake got pretty near dry.

Q. 15. Was there any thing to make it a matter of any consequence then?

A. 15. It has been so long I can't remember, though I suppose 40 or 50 acres.

Q. 16. Do you know where this big cottonwood tree stood that has been testified to?

A. 16. Well I don't know whether I do or not. I helped Mr. Musgrave survey and cut out a road about through the center of 36.

Q. 17. How far was the north bank of the lake from where Mr. Musgrave's road run?

A. 17. About one mile from where that road run to the north bank of the lake.

Q. 18. Now that road you stated ran through the center of 36 did it not?

A. 18. Yes, sir.

Q. 19. Did that road run over dry land from one side of the lake to the other?

A. 19. The east part of it was low, and as you went you struck some high land.

Q. 20. On what side of the lake is the water now located?

A. 20. On the south west side.

Q. 21. About how wide a space of water is there?

A. 21. It amounts to the rain we have, in an ordinary stage I would think it from 50 yards to a half of a mile.

Q. 22. Is that the only place where there is standing water?

A. 22. That is all I know anything about.

Q. 23. State how the map which you are now looking at, and which is a certified copy of the original U. S. Surveys as made of the lands of Walker's Lake, furnished by the land office in 148 Little Rock, compare with the lake when you first knew it.

A. 23. It is just like the lake was when I first knew it.

Q. 24. Does it substantially show the margins on the bank of the lake as you first knew them?

A. 24. Yes, sir.

Cross-examination:

Q. 1. When was that Musgrave road surveyed and cut across Walker's Lake from your farm westward to the present Walker's Lake?

A. 1. Mr. Musgrave surveyed a road there, I don't know that I can say, but it seems to me that it was in 1886 or 1887.

Q. 2. Did you help him make this survey?

A. 2. Yes, sir, I believe I blazed it.

Q. 3. Did this road practically follow the half section line running east and west?

A. 3. I think it did.

Q. 4. Did it go entirely across section 36?

A. 4. I don't know just where it stopped.

Q. 5. Is it not a fact Mr. Huffman that a great deal of timber had been cut and floated out of this territory prior to that time?

A. 5. Yes, sir, a right smart some any way.

Q. 6. Was an additional value attached to lands in that community by reason of them having been on Walker's Lake?

A. 6. Well, a long time ago they valued the front lands higher because it would drain off quicker.

Q. 7. The fact of your bordering upon the shore side of the lake and does not yet add an additional value to the land does it?

A. 7. Well, I don't know. I haven't bought any land, and don't know of any changing hands.

Q. 8. How long have you owned that land?

A. 8. My father owned it in his lifetime, and we have it yet; he died in '70.

149 Q. 9. State whether or not you have recently, within the last few months purchased an outstanding title to this land?

A. 9. It has been about 12 months but we thought we owned it all the time.

Q. 10. Did you get a deed from these parties?

A. 10. Yes, sir.

Q. 11. How much did you pay them?

A. 11. \$1,000.00.

Q. 12. Who were they?

A. 12. I bought from Mr. Taylor, Fred Taylor.

Q. 13. Why did you buy that title?

A. 13. Because I was of the opinion that lands sold by tax title in '99 was void.

Defendants' attorneys objects to question and answers.

Q. 14. These lands that were not fenced lay between your farm and the lake, did they not?

A. 14. In 30, yes sir.

Q. 15. At the time you purchased this title those lands did not border on what was Walker's Lake at the time did it?

A. 15. There was some awful low lands, that held water like they did on the bank of the lake.

Q. 16. You had no doubt about your ability to hold the lands in your field did you?

A. 16. I don't know, I didn't know but what there might be some trouble about it, of course I had more hopes of holding than the woods lands.

(Defendants' Attorney objects to the questions and answers.)

Cross-examination.

Q. 1. When you were a boy, what were your habits as to whether you stayed pretty close at home or roamed around like some boys?

150 A. 1. I reckon I would be considered a boy that stayed pretty close at home, but it wasn't far down to the lake, and I went there pretty often.

Q. 2. Since you have gotten up, have you been after cattle and riding around after stock through the country, or have you rather stayed at home?

A. 2. I haven't hunted stock a great deal I have stayed pretty close at home.

Q. 3. From what you say I imagine you never was a man to tramp out and trap game and hunt, nor a man to go into the woods and look after cattle, nor do any of those things, am I right as to this?

A. 3. I never trapped or hunted much nor I never was on the go much.

Q. 4. Have you farmed your lands much or rented it out?

A. 4. Well, I used to farm when I did not have any more than I could farm myself, and when I got more I rented.

Q. 5. Have you any cattle running out in the woods?

A. 5. Yes, sir.

Q. 6. You don't look them up yourself, though you say?

A. 6. I never did look them up much, and in the last few years I don't suppose I have looked them up any.

Q. 7. Didn't you cut or have you cut a good deal of big timber off of these lands between your original farm and the lake as it now is?

A. 7. No, I don't know that I ever cut any, nor never did have much cut; we had some cut.

Q. 8. Don't you know there was a great deal of big timber cut on this?

A. 8. There was some big timber cut in there.

Q. 9. There has been some big cottonwood timber cut in there hasn't there?

151 A. 9. There has been some cut north west.

Q. 10. North west of you there has been a great deal of big cottonwood timber cut hasn't there?

A. 10. There has been some cut.

Q. 11. Didn't you see all of the cutting that was going on there?

A. 11. The Tipton Brothers had some cut, and I think *there* I was there several times when they were cutting; they bought it from Dr. Williams.

Q. 12. You know then it was big cottonwood don't you?

A. 12. It was average cottonwood.

Q. 13. Now, you say that you went with Mr. Musgraves along this half section line across 36 when he cut that road, on what occasion did you ever go on this land north of that?

A. 13. Well one time I helped Dr. Williams, and he started at the north west corner of the south half of 25, and went a mile and he had a survey run south, and he went a way down on 36.

Q. 14. When was it that you helped make that survey?

A. 14. I believe that it was in the fall of '97.

Q. 15. And you and Dr. Williams at that time run a line from up in 25 south, up to where you struck the lake down in 36?

A. 15. The County Surveyor did the work but I went with them.

Q. 16. That was the line that the surveying party ran out while you were with them, was it not?

A. 16. Yes we went west and then went south I don't know how far.

Q. 17. Did you get down as far as the lake?

A. 17. We got to where it was tolerably muddy, I don't know whether you call it the lake or not.

Q. 18. When were you down in the southern part of 36?

A. 18. Long out on the east side where it joins 31, I went down there quite often, though it may have been a good while since I was on the south half of 36.

152 Q. 19. Were you down there at any time a good many years ago?

A. 19. I passed it a good many times a long time ago in boats and canoes.

Q. 20. Years ago before Mr. Musgrave cut that road, and before you were in the surveying party, you generally when you went down on the lake, just went to that part of the lake that was next to your land, did you not?

A. 20. I went there oftener than I did any other place.

Q. 21. I believe that you said that you did not use to go away from your home very much, but that you did go down to the lake right often where it joins your property?

A. 22. I think I said that.

Q. 22. How much land do you figure that you would gain, if you succeeded in the contentions, which you make in this case?

A. 22. It will figure close to 500 acres.

Q. 23. How much land did you originally own, without taking into consideration this land that you claim is an accretion?

A. 23. About 600 acres something near that; there might have been a little more or a little less.

Q. 24. You said in your direct examination that the dry season of the year, the water went out of these lands, I understood you to say that?

A. 24. That was owing to when it was, when I could first remember it was water pretty much all the year.

Q. 25. When was the first year that the water went out?

A. 25. Well, it got dry, I don't know that you could quite *as you could quite* as far as the lake is now, but it got dry pretty far back, maybe 25 years ago.

Q. 26. How much, or what would be 36, T. 16, Range, 12 in Walkers Lake when you first the lake?

A. 26. All of it.

153 Q. 27. How much of 25 was in the lake?

A. 27. About all the south half.

Q. 28. Do you remember where that Petigo mound was?

A. 28. On the west side of the lake in 35.

Q. 29. Now in going from that mound to the north bank of the lake up in sec. 25 how far across was it?

A. 29. I think it would be about two miles.

Q. 30. Was it a lake when you knew it?

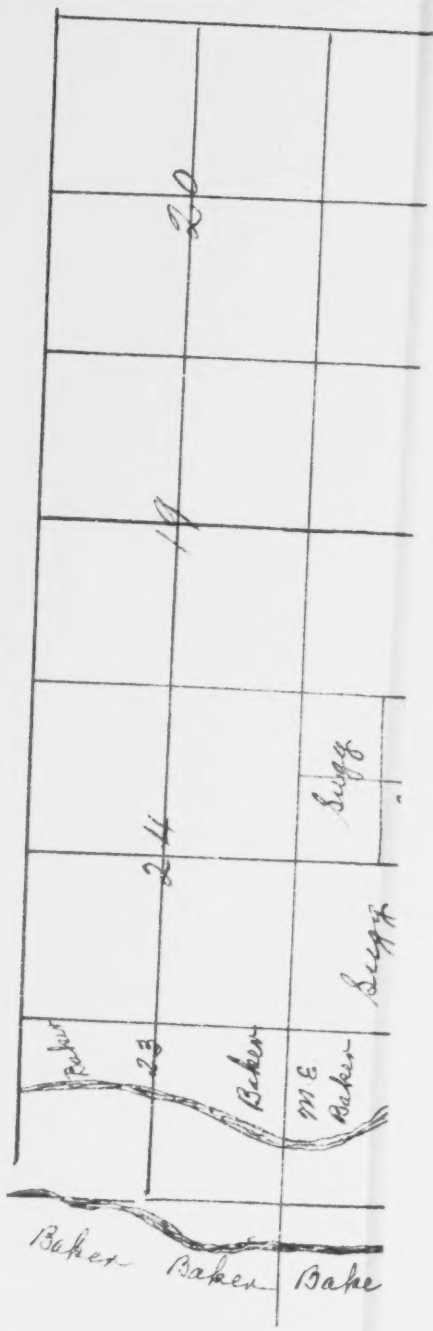
A. 30. Yes, sir, water standing in there.

Q. 31. Then as I understand you when you first knew Walkers Lake it was a lake or sheet of water covering an area substantially like that shown on the map?

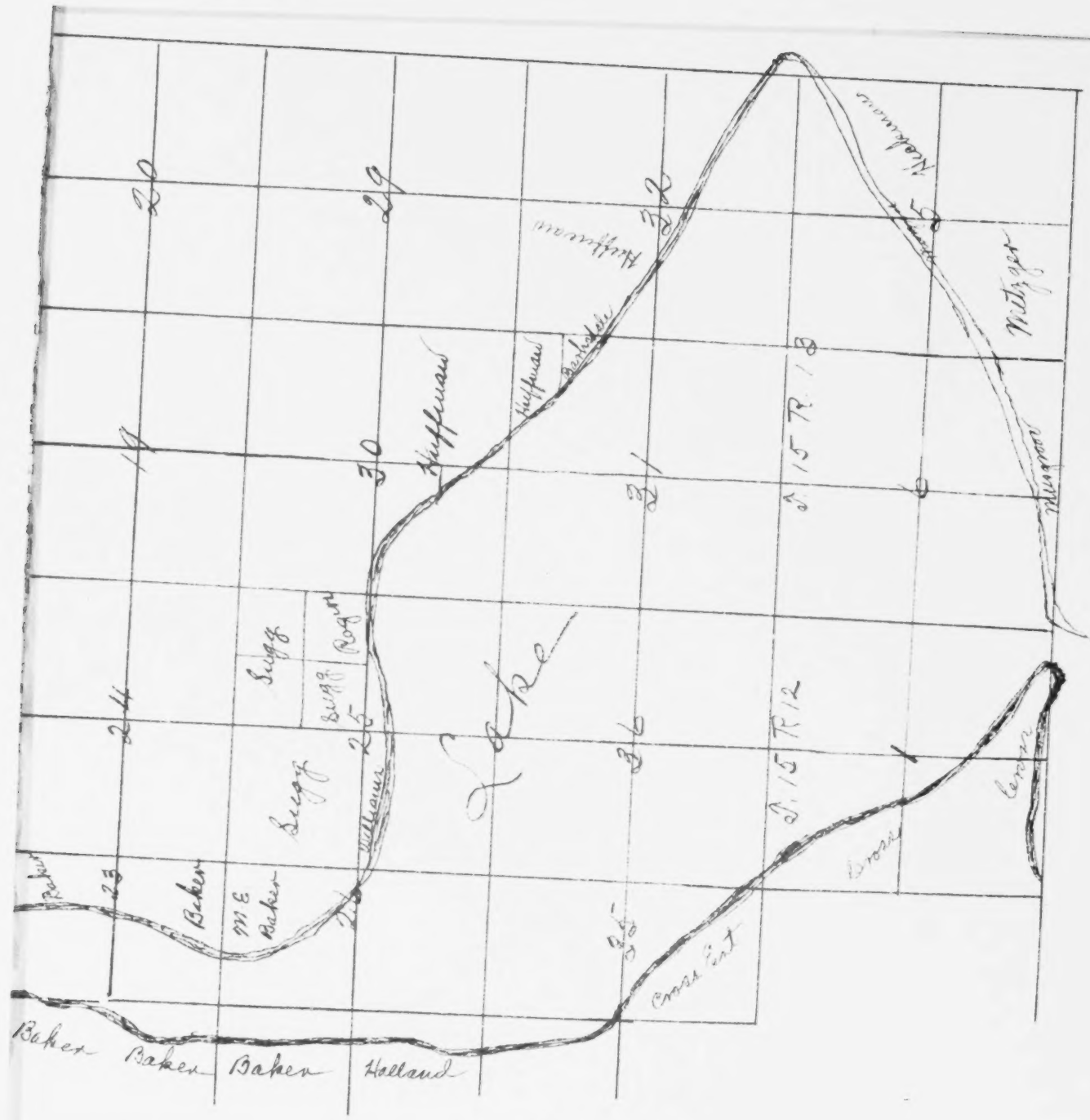
A. 31. Yes, sir.

(Here follows diagram marked page 154.)

Plat of sections 30, 31 and 32 T. 16. north and range 13 east,
 and of Sec. 25 T. 16. N. R. 12. E. also of Sec. 1. T. 15 N. R. 12.
 E. and Sec. 5 & 6 T. 15. N. R. 13. E. Mississippi County, Arkansas,
 copied from State Land Office record.



30-31-32 T. 16. N. R. 13 E.



the
T
S
I
W
13
th
m
36
16
or
sa
th

155

*Certificate of State Land Commissioner.*CITY OF LITTLE ROCK,
State of Arkansas:

Office of Commissioner of State Lands.

I, J. W. Colquitt, commissioner of State Lands, for the State of Arkansas, duly commissioned and acting, do, hereby, certify that the above and foregoing *specch* is a true and correct copy of the plat of Sec. 30, 31 and 32, in township 16 north and range 13 east; of section 25 and what would be section 26, if surveyed, all in township 16, north and range 12 east; of section 1, in township 15 north range and 12 east; and of sections 5 & 6 in township 15 north range 13 east; all situated in the County of Mississippi and State of Arkansas; as the same appears of record in my office, showing the official survey of said lands as surveyed and platted by the United States Government, in the years 1837 & 1847. That, as thus platted, said lands were donated to the State of Arkansas, as swamp and overflowed lands under the act of Congress of September 1850. That at that time none of the lands in the lake, were surveyed as lands; and were not subject to sale, nor entry. Nor, have they, since, been surveyed, nor become subject to sale nor entry. That said plat shows that the survey of the United States Government of Sec. 30 and W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of 32, in township 16, north, range 13 east, made in the year 1847, the south half of said section 30, and the north east quarter of said section 31 and the W. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of 32, were surveyed and bounded as meandering along, and extending only up to, the north east margin, or bank of said lake, as laid down upon said plat, making the south west boundary line of said south half of section 30 north east quarter of section 31 and the W. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of 32 to meander line along the north east margin or bank of said lake from a point on, or near the range line between ranges twelve and thirteen, one half mile south of the north west corner of said section 30; running thence, nearly diagonally, south east through the south west quarter of said section 31, from the north west corner to the south east corner thereof and across S. W. corner of the N. W. $\frac{1}{4}$ of 32. That, when Thos. H. Ham, entered the south half of said section 30, from the State of Arkansas, in the year 1852; and Jacob Huffman and Jessu Huffman entered the north east quarter of said section 31 and the W. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of 32 from the State of Arkansas, in the year 1852; both entries were made subject to said survey and plat, as to the boundaries of said lands. And that, at that time, the records of my office show that all of the area in what would be the S. $\frac{1}{2}$ of Sec. 30, all of section 31 and the south half of section 32 all in township 16, north and range 13 east (if surveyed) south west of the margin or bank of said lake was surveyed as land, and was not subject to sale or entry. That the records of my office further show that all of the area which would constitute the S. $\frac{1}{2}$ of section 25 (except a

narrow strip lying along the north side thereof), and all of section 36, all in township 16, north and range 12 east, the north east part of section 1 township 15, north and range 12 east, lying north east of a diagonal line running from the north west corner to the south east corner of said section; and the north half, and the north half of the south half of section 6, and the north east quarter of section 2 (except a small portion of the south east corner thereof) all in township 15, north, range 13 east; was unsurveyed as land, and was not subject to sale or entry; but that the same was surveyed, platted and regarded as a lake, or water.

Witness my hand as such commissioner and the seal of my office at office, in Little Rock, Arkansas, on this 6th day of September in the year 1899.

J. W. COLQUITT, *Commissioner*.

157

Report of Commissioners.

E. M. HUFFMAN, J. H. HUFFMAN, ADA HUFFMAN, Mrs. M. C. Williams, W. R. Barksdale, D. W. Wallace, Mary Baker, E. G. Sugg, S. J. Rogers, Catherine Cross, as Administratrix of the Estate of George Cross, Deceased; T. H. Musgrave, Sarah Hickman, Wm. Metzger, Annie L. Hogan, & J. A. Wheeler

vs.

THOS. H. HATFIELD, J. H. PIKE, The UNKNOWN HEIRS OF MARILDA HOLLAND, and The UNKNOWN HEIRS OF C. C. WILLIAMS.

Now on this day came on to be heard the report of the commissioners T. J. Nance, W. B. Loflin and W. W. Hughes appointed at the last term of this court to set aside and apportion off to the various litigants in this cause the dried up lake lands shown to be in the lake known as Walkers Lake according and in proportion to the respective frontage of the original lands of said litigants meandering and bordering upon the margin or banks of what was said lake which is in words and figures as follows to-wit:

158 Mississippi Chancery Court, October Term, 1901, Osceola District.

E. M. HUFFMAN et al.

vs.

THOMAS HATFIELD, J. H. PIKE et al.

Come your commissioners, T. J. Nance, W. B. Loflin and W. W. Hughes, heretofore appointed at the March term 1901 of this court to make partition of the uncovered lands involved in this action among the various litigants to the suit and respectively report, that they did meet and after diligently enquiring into the location of the lands in controversy and the respective frontage of the original lands of the litigants upon the lands of said lake they have divided out and set aside the uncovered lands as follows: to Mary Baker all

that portion of lake lands, which if sectionized would be in the north half of section 23 in the south half of section 23, east of a line running north and south through the center of section 23 east of the lake, and in all of section 26 all being in township 16 north range 12 east.

To J. A. Wheeler all that portion of the lake land which if sectionized would be in the south half of section 23 west of a line running north and south through a line running north and south through the center of the lake.

To C. C. Williams estate, all of that portion of the lake lands which if sectionized would be in the south west quarter of section 25 and in the north half of the north west quarter of section 36 in township 16 north range 12 east.

To Marilda Holland all of that portion of the lake lands which if sectionized would be the north half of section 35 township 16 north range 12 east.

159 To E. G. Sugg, all of that portion of the lake land which if sectionized would be the west half of the south east quarter of section 25, and in the west half of the north east quarter of section 36 township 16 north range 12 east.

To S. J. Rogers, all of that portion of the lake lands — if sectionized would be in the east half of the south east quarter of section 25, and the east half of the north east quarter of said section 36.

To E. M. Huffman, J. H. Huffman, Ada Huffman, and Mrs. M. C. Williams, as tenants in common all of that portion of the lake lands which if sectionized would be in the north half of section 30, and in the west half of the north west quarter of 32 and in all of section 31, and in the south west quarter of 32 township 16 north range 13 east, north and west of a line running diagonally from the south east corner of the west half of the north west quarter of said section 32 to a point on the range line between ranges 15 and 16, one fourth of a mile west of the south west corner of the south west quarter of said section 32. All of which however is carved in favor of W. R. Barksdale, all that portion of the lake land which if sectionized would be in that portion of the east half of said section 31 lying in between the lines converging at the south west corner of said east half section 31, and commencing respectively at points on the bank of the lake where the north and east boundary lines of said Barksdale land which is in the south half of the north east quarter of said section 31 touch the bank of said lake.

To T. H. Hatfield and J. H. Pike all that portion of the lake lands — if sectionized would be in that portion of the south west quarter of said section 32 and the south east quarter of the south east quarter of said section 31 lying south and east of the diagonal line heretofore defined as being the south and east boundary of the Huffman lands and north and west line commencing at a point on the margin of the lake 34 rods west of the open line dividing south half of section 32 into east and west halves and running parallel with the line as herein defined between E. M. Huffman et al. and Hatfield to the range line.

To Mrs. Annie L. Hogan all of that portion of the lake lands which if sectionized would be in that portion of the south half of said section 32 south and east of the line heretofore described as being the south and east boundary of the Hatfield and Pike land and north of the range line between ranges 15 and 16.

To Miss Sarah Hickman all that portion of the lake lands which if sectionized would be in that portion of the north half of section 5 township 15 north range 13 east south of said range line and east of the line drawn from a point on the bank of the lake where the west boundary line of the north east quarter of said section 5 strikes the lake and running thence diagonally to a point on the range line one fourth of a mile west of the north west corner of said north east quarter of section 5.

To T. H. Musgrave, all of that portion of the lake lands which if sectionized would be in the east half of the north west quarter of said section 5 west of the east boundary line of the Hickman land as above defined.

To Wm. Metzger all of that portion of the lake lands which if sectionized would be in the west half of said section 5.

To George Croes estate, all of that portion of the lake lands which if sectionized would be in the whole of section 15 north range 12 east and the south east quarter of section 35, and the south half of the north west quarter and the south half of the north west quarter and the south half of section 26 township 16 north range — east.

To T. H. Musgrave, all of that portion of the lake lands which if sectionized would be in section 6 township 15 north range 13 east.

W. B. LOFLIN,
W. W. HUGHES,
T. J. NANCE.

Subscribed and sworn to before me this 23rd day of Sept. 1901.

J. T. LASLEY,
Notary Public.

161 And no exceptions having been filed to said report and the court being sufficiently advised as to the equity and justice of said report the same is hereby approved and confirmed by the court.

It is therefore considered and adjudged by the court, 1st. that the plaintiff Mary E. Baker, as the owner of fractional all of section 26 and of the east fractional half and the north west fractional quarter of section 23 in township 16 north and range 12 east is the sole and separate owner of and has the sole title exclusively of all of the parties in this action to all of that portion of lake lands which if sectionized would be in the north half of said section 23 in the south half of said section 23 east of line running north and south through the center of what was the lake and in all of said section 26.

2nd. That the plaintiff J. A. Wheeler, as the owner of the fractional south west quarter of section 23 in township 16 north, and

range 12 east is the sole and separate owner of and has the sole title exclusively of all of the other parties in this action to all of that portion of said lake lands which if sectionized would be in the south half of said section 23 west of line running north and south through the center of what was the lake.

3rd. That the defendant the unknown heirs at law of the late C. C. Williams as the owners of fractional south half of the south west quarter of section 25 in township 16 north range 12 east are the sole and separate owners of and have the sole title of all of the other parties in this action to all of that portion of the lake lands if sectionized would be in the south west quarter of said section 25 and in the north half of the north west quarter of section 36 same township and range.

4th. That the defendants the unknown heirs at law of the late Marilda Holland deceased as the owners of the fractional north west quarter of section 35 in township 16 north, range 12 east are the sole and separate owners of and have the sole title exclusively of all other parties in this action to all that portion of said lake lands which if sectionized would be in the north half of said section 35.

5th. That E. G. Sugg plaintiff as the owner of the south west quarter of the north east quarter of section 25 in township 16 north, range 12 east is the sole owner of and has the sole title exclusively of all of the other parties in this action to all of that portion of said lake lands if sectionized would be in the west half of the south east quarter of said section 25, and in the west half of the north east quarter of section 36 same township and range.

6th. That the plaintiff S. J. Rogers, as the owner of the south east quarter of the north east quarter of section 25 in township 16 north, range 12 east is the sole owner of and has the sole title exclusively of all of the other parties to this action to all that portion of said lake lands which if sectionized would be in the east half of the south east quarter of said section 25 and in the east half of the north east quarter of section 36, same township and range.

7th. That E. M. Huffman, J. H. Huffman, Ada Huffman and Mrs. M. C. Williams as owners in common of the fractional south half of section 30 the fractional north half of the north east quarter of section 32, all in township 16 north and range 13 east, are the sole owners of and have the sole title exclusively of all of the other parties to this action of all that portion of said lake lands which if sectionized would be in the south half of said section 30 and in all of section 31 in the W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of said section 32 and in the south west quarter of said section 32 north and west of a line running diagonally from the south east corner of the west half of the north west quarter of said section 32 to a point on the range line between ranges 15 and 16 one fourth of a mile west of the south west corner of the south west quarter of said section 32, except however, as to the tract carved out of the above in favor of the plaintiff W. R. Barksdale, as set out and described in the next paragraph.

8th. That W. R. Barksdale as the owner of the south half of the fractional north east quarter of section 31 in township 16 and range 13 east is the sole owner of and has the sole title exclusively of all of the other parties to this action to all that portion of said lake lands which if sectionized would be in that portion of the east half of said section 31, lying in between two lines converging at the south west corner of the said east half section 31 and commencing respectively at points on the bank of the lake where the north and east boundary lines of said Barksdale land which is in the south half of the north east quarter of said section 31 touch the banks of said lake.

9th. That the defendants Thos. H. Hatfield as the owner of that portion of the fractional south west quarter of section 32 in township 16 north and range 13 east lying west of a line drawn 34 rods west of that parallel with the dividing line between the south west and south east quarters of said section 32 is the sole owner of and has the sole title exclusively of all of the other parties to this action to all that portion of lake lands which if sectionized would be in that portion of the south west quarter of the south east quarter of said section 31, lying south and east of the diagonal line heretofore defined as being the south and east boundary line of the lands of E. M. Huffman, J. H. Huffman, Ada Huffman and Mrs. Williams and north and west of a line commencing at a point on the bank of the lake 34 rods west of the open line dividing the south half of said section 32 into south east and south west quarters and running parallel with the lines as herein defined between E. M. Huffman and others and the said Thos. H. Hatfield to the range line between — 15 and 16.

10th. That Annie L. Logan, as the owner of 80 acres of land carved out of the south east quarter and the south west quarter of section 32 in township 16 north and range 13 east, as follows commencing on the banks of the Mississippi River, on the open line dividing said section into north and south halves thence west 160 rods 34 rods of which extend west of the line dividing said section into south east and south west quarters thence south 80 rods thence east to the river thence up the river to point of beginning which description embraces the whole of the fractional south east quarter of said section 32 as originally surveyed is the sole owner of and has the sole title exclusively of all other parties to this action to all that portion of said lake land which if sectionized would be in that portion of the south half of said section 32 south and east of lines of the Thomas H. Hatfield land north and south of the range line between ranges 15 and 16.

11th. That Miss Sarah Hickman, as the owners of the fractional north east quarter of section 5 in township 15 north and range 13 east is the sole owner of and has the sole title to exclusively of all other parties to this suit to all that portion of said lake lands which if sectionized would be in that portion of the north half of said section 5 east of a line drawn from a point on the bank of the lake where the west boundary line of the north east quarter of said section 5, strikes the lake and running thence diagonally to a point

on the range line one fourth of a mile west of the north west corner of said north east quarter of section 5.

12th. That T. H. Musgrave as the owner of the fractional west quarter of section 5 in township 15 north and range 13 east and the fractional south half of section 6 same township and range is the sole owner of and has the sole title exclusively of all other parties to this action to all that portion of said lake lands which if sectionized

would be the east half of the north west quarter of said section 5 west, of the east boundary line of the Hickman land as above described to all that portion of said lake which if sectionized would be in said section 6 township 15 north range 13 east.

13th. That W. M. Metzger as the owner of the south west quarter of section 5 township 15 north range 13 east is the sole owner of and has the sole title exclusively of all other parties to this action to all that portion of said lake lands which if sectionized would be in the south west quarter and the west half of the north west quarter of section 5.

14th. That the heirs at law of the late George Cross as the owners of the fractional south east quarter of section 35 in township 16 north and range 12 east and ~~fractional~~ all of section one in township 15 north and range 12 east are the sole owners of and have the sole title exclusively of all other parties to this action to all that portion of said lake land which if sectionized would be in the south east quarter of said section 35, in the south half of the north west quarter and in the south half of section 35 township 16 north and range 12 east and in all of said section 1 township 15 north range 12 east.

And it further appearing to the court that the defendants Thos. H. Hatfield and J. H. Pike, were enjoined by the plaintiffs E. M. Huffman, J. H. Huffman, Ada Huffman and Mrs. Williams from cutting and removing any timber from off what would be the south half of section 31 in township 16 north and range 13 east upon the grounds that said lands belonged to said plaintiffs said defendants are hereby perpetually enjoined from cutting and removing any timber from off all that portion of section 31 township 16 north and range 12 east north and west of the line between the lands of the said E. M. Huffman et al., and the lands of the said Thos. H. Hatfield as defined in this decree and it still further appearing to the court that certain timber which has been

cut upon said south half of section 31 by said defendants was cut upon the lands of said plaintiffs as herein described timber, by consent was taken charge of by one W. B. Loflin, as receiver, who has since sold said timber and now holds proceeds thereof subject to the orders of this court said W. B. Loflin is hereby ordered by the court to pay over the proceeds of said timber to the said E. M. Huffman, J. H. Huffman, Ada Huffman and Mrs. Williams.

It is further ordered and decreed by the court that defendants Thos. H. Hatfield and J. H. Pike do pay all the costs of this injunction incurred in this suit and that all of the other costs of the action

be at the mutual costs of all of the parties hereto and that the commissioners making partitions of said lake lands do each have three dollars for their services to be taxed as part of said costs.

Clerk's Certificate of Transcript.

STATE OF ARKANSAS,
County of Mississippi:

I, J. W. Rhodes, clerk of Chancery Court, and Ex-Officio Recorder within and for the county and State aforesaid, do hereby certify that the annexed and foregoing pages contain a true and perfect transcript of the order in case of E. M. Huffman et al. vs. T. H. Hatfield as therein set forth and as the same appears of record, on page 520 et seq. Record, Volume 4 Chancery Records Mississippi County, Arkansas.

Witness my hand and official seal this 17th day of March, 1905.

J. W. RHODES, Clerk.

167

Appointment of Partitioners.

Mississippi County Chancery Court, Osceola District, Arkansas.

E. M. HUFFMAN, J. H. HUFFMAN, Mrs. N. C. WILLIAMS, W. R. Barksdale, D. W. Wallace, G. S. Wallace, Mary E. Baker, E. G. Sugg, S. J. Rogers, Catherine Cross, as Administratrix of the Estate of George Cross, Deceased, T. H. Musgrave, Sarah Hickman, W. M. Metzger, Annie L. Hogan, & J. A. Wheeler (Plaintiffs),
vs.

THOS. H. HATFIELD, J. H. PIKE, THE UNKNOWN HEIRS of Marilda Holland, and The Unknown Heirs of C. C. Williams (Defendants).

Now on this day this cause came on to be heard, and the defendants, Thos. H. Hatfield and J. H. Pike, having been duly summoned by personal service, and having appeared and answered and the defendants, the unknown heirs of Marilda Holland and the unknown heirs of C. C. Williams, having been duly summoned by publication of warning order as shown by Proof of E. M. Huffman, E. H. Huffman, Ada Huffman, proof herein filed. And plaintiffs being present by their attorneys S. S. Semmes and the defendants J. H. Hatfield and J. H. Pike being present by their attorney and announcing themselves ready for trial and the attorney for the non-resident defendants, the unknown heirs of Marilda Holland and the unknown heirs of C. C. Williams having filed their report. And the court having heard the pleading the proof, the exhibits, and the argument of counsel doth find that the plaintiffs E. M. Huffman, J. H. Huffman, Ada Huffman and Mrs. M. C. Williams are the owners by record title, as alleged in the complaint of

168

the following lands situated in the county of Mississippi and State of Arkansas, to-wit: fractional south half of sec. — the fractional north half of the north east quarter of section 31, and the fractional west — of the north west quarter of section 32 in township 16 north and range 13 east.

That the plaintiff W. R. Barksdale is the owner of the south half of the fractional north east quarter of said section 31. That the plaintiff Mary E. Baker is the owner of *the fractional* all of section 26 and the fractional east half and the fractional north west quarter of section 23 all in township 16 north and range 12 east.

That the plaintiff E. G. Sugg is the owner of the south west quarter of the north east quarter of section 25 in township 16 north and range 12 east.

That the plaintiff S. J. Rogers is the owner of the south east quarter of the north east quarter of section 25 in township 16 north and range 12 east.

That the plaintiff T. H. Musgrave is the owner of the fractional north west quarter of section 5 and the fractional south half of section 6 in township 15 north and range 13 east.

That the estate of the late George Cross is the owner of the fractional south east quarter of section 35, in township 16 north range 12 east and *fractional* all of section one in township 15 north and range 12.

That the plaintiff Sarah Hickman is the owner of the fractional north east quarter of section 5 in township 15 north and range 13 east.

That the plaintiff W. M. Metzger is the owner of the fractional south west quarter of section 5 township 15 range 13 east.

That the plaintiff Annie L. Hogan is the owner of 80 acres carved out of the south east quarter of the south west quarter of section 32 in township 16 north range 13 east as follows:

Commencing at the banks of the Mississippi River on the open line dividing said section into north and south halves running thence west 160 rods, 34 rods of which extends west of the line dividing said S. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of Sec. 32 thence south 80 rods thence east to the river, thence up the river to point of beginning which description embraces the whole of fractional south east quarter of said section 32 as originally surveyed.

That the plaintiff J. A. Wheeler is the owner of the south west $\frac{1}{4}$ of section 23 township 16 north range 12 east.

That the defendant- Thos. H. Hatfield and J. H. Pike are the owners of so much of the fractional south west quarter of section 32 in township 16 north range 13 east as lies west of line drawn 34 rods west of and parallel to dividing line between said S. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of Sec. 32.

That the defendants the unknown heirs of Marilda Holland are the owners of fractional north west quarter of section 35, in township 16 north range 12 east.

And the defendants the unknown heirs of C. C. Williams are

the owners of the fractional south half of south west quarter of section 25 in township 16 north range 12 east.

That all of said lands border and meander upon and along the banks of what was at the time of the original United States survey, a shallow and unnavigable lake shown as Walkers Lake that said land has since filled in and become dry land and that the riparian owners of the lands bordering on said lake now own the uncovered lands, in said lake to the center of said lake in proportion to the respective frontage of their lands so bordering on said lake.

That by nature of the proceeding in this cause and on the respective rights of the parties litigant there should be partition and division of said uncovered lake lands among said parties litigant so as to define and establish their respective boundaries.

170 And to this end T. J. Nance, W. B. Loflin and W. W. Hughes are hereby appointed commissioners for the purpose of dividing out and setting aside to the litigants in this action the uncovered lands of said lake proportional to the lake frontage of the original lands of said litigants, and in conformity with this decree. And said commissioners will make report of their acts and doing therein to the next term of this court to which time this cause is continued.

(Here follows diagrams marked pages 171, 172, 173, and 174.)

3878



212.

The above plat of township 15 north of the base line, range 12 east of the 5th principal meridian, is strictly conformable to the field notes of the survey thereon on file in this office which have

Plot of boundary 15 R 12.

east of the 5th principal meridian, is strictly conformable to the field notes of the survey thereon on file in this office which have been examined and approved.

The east and south boundaries amounting to 8 miles and 22 and 62/100 Chs. were surveyed in February and March 1837 by Greer and Ferguson, D.S. under contract of the 27th of October, 1836, and were for by me, and charged in the accounts of the 3rd quarter 1844 as per voucher No. 1.

The subdivisional lines and meanders amounting to 75 miles 18 and 29/100 Chs. were surveyed in October and November, 1847, by Gideon Pendleton, D.S. under contract 3rd of October, 1846, and were paid for by the Treasurer of the United States upon the account rendered and receipted by Gideon Pendleton, D.S. and certified from this office, as per voucher No. 4, of 2nd. quarter 1848.

(Signed)

Wm. Pelham.

Surveyor of Public Lands in Arkansas.

Plot of Sec. 16 R. 12.



T. 16. N. R. 12 E.

Surveyors Office, Little Rock, Ark. 27th June, 1849.

The above plat of Township 16 north of the base line, range 12 east of the fifth principal meridian, is strictly conformable to the field notes of the surveys thereof on file in this which have been examined and approved.

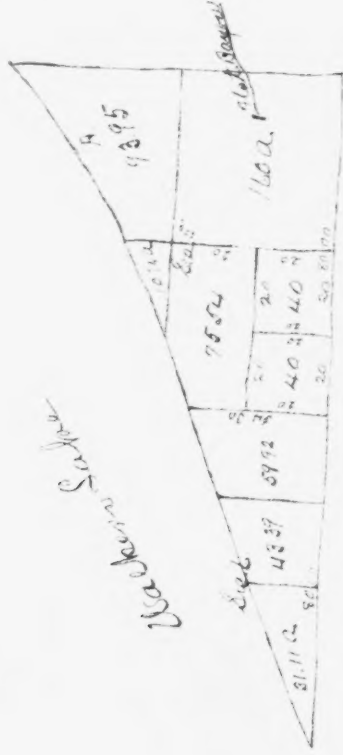
The east and south boundaries, subdivisinal lines and meanders and Missouri line along the north side of the township amounting to 51 miles and 78 and 75/100 Chs. were surveyed in January and December, 1847, and a part of the same corrected in 1848, by G. Pendleton, D.S. under contract of the 3rd of October, 1846, and were paid for by the Treasurer of the United States upon the account rendered and receipted by Gideon Pendleton, D.S. and certified from this office as per voucher No. 2. 2nd. gr. 1849.

(Signed)

L. Gibson

Surveyor of Public Lands in Arkansas.

J. L. M. R. 13 E.



Surveyors Office Little Rock, Arkansas, 27th October, 1845.

The above plat of Township 15 north of the Base line, Range 13 East of the 5th principal Meridian, is strictly conformable to the field notes of the surveys thereof on file in this office which have been examined and approved.

The South boundary, subdivisioal lines and meanders of the Mississippi River, of Walkers Lake and Burfords Lake, amounting to 41 miles 13 and 71/100 chs. were surveyed in 1837, and parts of the same were resurveyed and corrected in September, 1843 and August 1844 by Wm. D. Ferguson, D.S. under the contract of the 27th of October, 1836. Payment for which was made by me and charged in the accounts of the 3rd quarter, 1844, Voucher No. 1.

(Signed)

Wm. Pelham.

Surveyor of Public Lands in Arkansas.

Plot of Walkers Lake - 13.

Plat of Sept. 16 7 13.

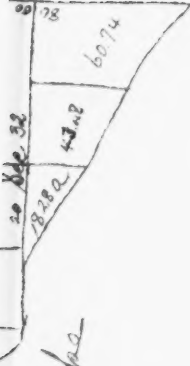


The above plat of fire township 16 north of the base line, range 13 east of the 5th principal meridian, is strictly conformable to the field notes of the surveys thereof on file in this office which have been examined and approved.

The south boundary amounting to 66 50/100 Chs. was surveyed in March 1837 by Greer & Ferguson, D.S. under contract of the 27th of October 1836 and was paid for by W. Pelham, Sur. Pub. Lands and charged in accounts of the 3rd quarter 1844. Voucher No. 1.

The subdivisional lines reanders and Missouri Line along the

Walbern Lake



Plot of Sec. 16 T. 13

Surveyors office, Little Rock, Arkansas, 27th June, 1849.

The above plat of fire township 16 north of the base line, range 13 east of the 5th principal meridian, is strictly conformable to the field notes of the surveys thereof on file in this office which have been examined and approved.

The south boundary amounting to 66 50/100 Chs. was surveyed in March 1837 by Greer & Ferguson, D.S. under contract of the 27th of October 1836 and was paid for by W. Pelham, Sur. Pub. Lands and charged in accounts of the 3rd quarter 1844, Voucher No. 1.

The subdivisional lines meanders and Missouri Line along the north boundary of this township amounting to 14 miles and 1 and 77/100 Chs. were surveyed in December, 1847, by G. Pendleton, D.S. under contract of the 3rd of October, 1846, and were paid for by the Treasurer of the United States upon the account rendered and receipted by G. Pendleton, D.S. and certified from this office as per voucher No. 2. 2nd. qr. 1849.

(Signed)

L. Cibson.

Surveyor of Public Lands in Arkansas.

174.

175

Certificate of Commissioner State Lands.

OFFICE OF COMMISSIONER OF STATE LANDS.

I, F. E. Conway, duly commissioned and acting commissioner of State Lands in and for the State of Arkansas, do hereby certify that page No. 1 of this certificate is a true and correct copy of the official Government plat of T. 15, N. R. 12 E. in so far as the same relates to secs. 1 & 2 of the said township, and contains a true and complete copy of the certificate of the Surveyor of Public Lands in Arkansas for the said Township. That page No. 2 of this certificate is a true and complete copy of the official Government plat of T. 16 N. R. 12 E. in so far as the same relates to secs. 25, 26 & 35, and contains a true and complete copy of the certificate of the Surveyor of Public Lands in Arkansas for the said township; that page No. 3 of this certificate is a true and correct copy of the Official Government plat of T. 15 N. R. 13 E., in so far as the same relates to sections 5 & — of the said township, and contains a true and complete copy of the certificate of the Surveyor of Public Lands for Arkansas for the said township; that page No. 4 of this certificate is a true and correct copy of the official Government plat of T. 16, N. R. 13 E., in so far as the same relates to secs. 30, 31 & 32 of the said township, and contains a true and complete copy of the certificate of the Surveyor of Public Lands in Arkansas for the said township. All of the said plats and certificates herein referred to are now on file in this office; and I further certify that, as thus surveyed and platted, said lands were donated to the State of Arkansas, under the Swamp and Overflow act of Congress, of September, 1850; and, as thus surveyed and platted, said lands have been sold and conveyed by the State of Arkansas to the various — entering or purchasing the same.

In testimony whereof, I have hereunto set my hand as such Commissioner of State Land and affixed the seal of my office.
 176 Done this 27th day of September, 1904, at my office in the City of Little Rock, Arkansas.

[SEAL.]

F. E. CONWAY,
Commissioner of State Lands.

177

Field Notes.

Sections 1 & 2 Township 15, North, Range 12 East.
 Sections 25, 26 & 35 Township 16 North Range 12 East.
 Sections 5 & 6 Township 15 North Range 13 East.
 and
 Sections 30, 31 & 32 Township 16 North Range 13 East.

Field Notes, Sections 1 & 2, Township 15 North, Range 12 East.

Set post corner to frac. secs. 2 & 11 Township 15 North
 Range, 12 East, on the North side of Buford's Lake, 9.46
 Chs west of the proper point for the corner of section 1

- 2 11 & 12 in township 15 north range 12 east, from which
a cypress 12 inches in diameter brs. north 33 W 32 lks and
a cypress 12 inches in diameter brs. South 39 W 30 lks.
West on a true line between secs 2 & 11 T. 15 N. R. 12 E.
- 9.46 To the corner to frac secs 2 & 11
- 10.01 Ash 14 inches in diameter
- 40.00 Set $\frac{1}{4}$ section post from which a
Box Elder 6 inches in diameter brs N 19 E 36 lks and a
Elm 14 inches in diameter brs S 40 E 27 lks
- 43.98 Sweet Gum 8 inches in diameter
- 80.00 Set post corner to secs 2 3 10 & 11 from which a
Cypress 8 inches in diameter brs N 47 W 27 lks
Maple 12 inches in diameter brs S 49 W 38 lks
Ash 16 inches in diameter brs S 35 E 13 lks and a
Ash 8 inches in diameter brs N 23 E 50 lks
Timber cottonwood willow and ash
Land overflows 3 to 6 feet.
North between secs 2 & 3 T 15 N. R. 12 East.
- 4.60 Ash 6 inches in diameter
- 178
- 40.00 Set $\frac{1}{4}$ section post from which a
Sycamore 15 inches in diameter brs N 45 E 25 lks and a
Sycamore 8 inches in diameter brs N 52 W 27 lks
- 41.73 Cottonwood 30 inches in diameter
- 77.81 Intersected the South bdy T. 16 N. R. 12 E. 808 lks
East of the corner to secs 34 & 35, where
Set post corner to secs 2 & 3 T 15 N R 12 E., a
Maple 24 inches in diameter brs S 75 E 37 lks and a
Elm 18 inches in diameter brs S 36 W 20 lks
Land overflows 2 to 4 feet. Timber Oak, Cottonwood
Hickory and Elm.
From the corner to frac secs 2 & 11 on the north side of
Buford's Lake T 15 N. R. 12 E., meander along the said
lake through section 2 T. 15 N. R. 12 East
N 45 E 6 68 Chs
East 4 73 Chs. where find my castings
- 9.46 Chs from the corner to frac secs 2 & 11 northing
- 4.73 Chs from the said corner which brings me to a point
- 4.73 Chs North between secs 1 & 2 T. 15 N. R. 12, Where
- Set post corner to frac secs 1 & 2 T. 15 N. R. 12 E. a
Willow 12 inches in diameter brs N 34 E 22 lks and a
Willow 14 inches in diameter brs N 51 W 36 lks.
North between secs 1 & 2 T. 15 N. R. 12 East
- 33.11 Willow 10 ins dia
- 40.00 Set $\frac{1}{4}$ section post from which a
Cottonwood 38 ins dia brs N 30 E 25 lks and a
Ash 20 ins dia brs N 30 W 46 lks
- 71.42 Ash 6 ins dia
- 74.60 Intersected Walker's Lake, brs Southeast and Northwest,
Set post corner to frac secs 1 & 2 T. 15 N. R. 12 E., a
Sweet Gum 30 ins dia brs S 39 W 37 lks and a

179

Elm 18 ins dia brs S 54 E 55 lks
Land 1st half mile overflows 2 to 6 feet. Timber Willow
Ash, Cottonwood and Honey Locust. Last half mile, land
2nd rate Timber Gum Ash Oak Elm & Hickory. Under-
growth spicewood cane and briars.

From the corner to frl secs 1 & 2 T 15 N. R. 12 E., on the
South west side of Walker's Lake, meander along said lake
through section 2 T. 15 N. R. 12 East.

N 66 W 8 37 chs to the corner to
fractional secs 2 & 35 T. 15 & 16 N. R. 12 East.
From the corner to frl secs 1 & 2 T. 15 N. R. 12 E., on the
South west side of Walker's Lake, meander along said lake
through section 1 T. 15 N. R. 12 East.

S 71 E 37 83 Chs

S 30 E 73 50 Chs to corner to
frl sections 1 & 12 T. 15 N. R. 12 East.
From the corner to frl secs 1 & 12 (on the Range line) in
T. 15 N. R. 12 East, meander along Bufords Lake through
Section 1 T. 15 N. R. 12 East.

N 88 W 35 00 Chas

N 85 W 38 00 Chs to the corner to
frl sections 1 & 2 T. 15 N. R. 12 East., on the
North side of Buford's Lake.
Lands overflow 3 to 10 feet. Timber Cottonwood Willow
Ash and Honey Locust. Nov. 25, 1847.

Set post corner to secs 34 & 35 T. 16 N. R. 12 E., a
Box Elder 10 ins dia brs N 58 W 13 lks and a
Hackberry 30 ins dia brs N 43 E 56 lks
East along the south side of section 35 T. 15 N. R. 12 E.
Box Elder 8 ins dia

3.92
40.00 Set $\frac{1}{4}$ section post from which a

180

Sweet Gum 5 ins dia brs S 32 W 10 lks and a
Ash 14 ins dia brs N 14 E 21 lks

40 40 Ash 8 ins dia
80 00 Set post corner to secs 35 & 36 on the south east
side of Walker's Lake from which a
Cottonwood 18 ins dia brs N 62 E 17 lks and a
Cottonwood 18 ins dia brs N 78 W 13 lks

Field Notes, Secs. 25, 26, & 35, Township 16 N, R. 12 East..

4 81 North between secs 34 & 35 T. 16 N. R. 12 East.
40 00 Hackberry 6 ins dia
Set $\frac{1}{4}$ section post from which a
Sweet Gum 6 ins dia brs N 6 E 21 lks and a
Ash 14 ins dia brs N 23 W. 50 lks
42 25 Ash 12 ins dia
80 00 Set post corner to secs 26 27 34 & 35 from which a

- Cottonwood ins dia brs N 25 E 48 lks
 Cottonwood 24 ins dia brs N 6 W 50 lks
 Cottonwood 12 ins dia brs S 43 W 55 lks and a
 Box Elder 10 ins dia brs S 10 E 22 lks
 Land overflows 2 to 3 feet. Timber Cottonwood Ash and
 Oak Undergrowth Spicewood and green briars.
 East between secs 26 & 35 T. 16. N. R. 12 East.
 3 51 Cottonwood 24 ins dia
 29 58 Intersected the west side of Walker's Lake, where
 set post corner to frl secs 26 & 35 from which a
 Willow 20 ins dia brs S 70 W 20 lks and a
 Maple 8 ins dia brs N 51 W 27 lks
 Land overflows 1 to 5 feet. Timber Cottonwood Ash &
 Willow.
 North between secs 26 & 27 T. 16 N. R. 12 East.
 74 Sweet Gum 8 ins dia
 181
 40 00 Set $\frac{1}{4}$ section post from which a
 Sycamore 5 ins dia brs N 12 E 29 lks and a
 Maple 10 ins dia brs N 84 W 32 lks
 40 82 Cottonwood 18 ins dia
 80 00 Set post corner to secs 22 23 26 & 27 from which a
 Elm 14 ins dia brs N 14 E 55 lks
 Sweet Gum 18 ins dia brs N 16 W 49 lks
 Overcup Oak 8 ins dia brs S 24 W 35 lks and a
 Elm 18 ins dia brs S 21 E 17 lks
 Land overflows 1 to 4 feet, soil 1st rate. Timber Oak
 Hickory Hackberry Elm Walnut and Gum.
 Undergrowth Spicewood.
 East between secs 23 & 26 T 16 N. R. 12 East.
 1 00 Sweet Gum 36 ins dia
 13 50 Intersected the west side of Walker's Lake, Where
 Set post corner to secs 23 & 26 from which a
 Box Elder 14 ins dia brs S 80 W 47 lks and a
 Box Elder 28 ins dia brs N 27 W. 67 lks
 Land 1st rate. Timber Pecan Hickory Elm Hackberry and
 Mulberry.
 From the corner to frl secs 23 & 26 on the west side of
 Walker's Lake T 16 N. R. 12 E., and meander along said
 lake through section 26 T. 16 N. R. 12 East.
 South 10 00 chs
 S 12 E 57 00 "
 S 15 E 14 80 " to the corner to
 frl secs 26 & 35 T. 16 N. R. 12 East.
 From the corner to frl secs 26 & 35 on the west side of
 Walker's Lake T 16 N. R. 12 E. meander along the west
 side of said lake through section 35 T. 16 N. T. 12 East.
 182
 South 5 00 Chs.
 S 20 E 13 50 "

S 35 E 25 00 "

S 45 E 15 00 "

S 61 E 20 00 "

S 8 E 22 75 " to the corner to

frl section 35 T. 16 N. R. 12 E. on the township line.

West on a true line between secs 24 & 25 T. 16 N. R. 12 E.

1 81 Hackberry 8 ins dia

40 00 Set $\frac{1}{4}$ section post from which a

Maple 12 ins dia brs N 65 W, 33 lks and a

Willow 12 ins dia brs S 24 W 34 lks

41 43 Cottonwood 18 ins dia

80 00 Set post corner to secs 23 24 25 & 26 from which a

Maple 12 ins dia brs N 77 W 20 lks

Sycamore 12 ins dia brs S 52 W 54 lks

Cottonwood 24 ins dia brs S 34 E, 54 lks and a

Maple 10 ins dia brs N 23 E 42 lks

Land overflows 8 to 10 feet. Timber Cottonwood Willow
Sycamore and Ash.

South between secs 25 & 26 T. 16 N. R. 12 E.

36 Ash 6 ins dia

40 00 Intersected the north east side of Walker's Lake, where

Set post corner to frl secs 25 & 26 from which a

Ash 12 ins dia brs N 32 E 20 lks and a

Honey Locust 8 ins dia brs N 20 W, 20 lks

Land overflows 8 to 10 feet. Timber Cottonwood Willow
& Ash.

West between secs 23 & 26 T. 16 N. R. 12 Eas.

1 70 Maple 10 ins dia

183

36 32 Intersected the east side of Walker's Lake, where

Set post corner to frl secs 23 & 26 from which a

Ash 18 ins dia brs N 42 E 10 lks and a

Honey Locust brs S 21 $\frac{1}{2}$ E 38 lksLand overflows 8 to 10 feet. Timber Willow Ash Cotton-
wood and Honey Locust.From the corner to frl secs 23 & 26 T. 16 N. R. 12 E. on the
east side of Walker's Lake meander along said lake through
Section 26 T. 16 N. R. 12 East.

South 10 00 Chs.

S 40 E 20 00 "

S 45 E 15 00 "

S 40 E 6 00 "

N 86 E 9 37 " to the corner to

frl secs 25 & 26 T. 16 N. R. 12 East.

From the corner to frl secs 25 & 26 on the north east side of
Walker's Lake T 16 N. R. 12 E., meander along said lake
through section 25 T. 16 N. R. 12 East.

S 78 E 25 50 Chs

East 10 00 "

N 78 E 41 00 "

N 82 E 5 06 " to the corner to

- fractional secs 25 & 30 T. 16 N. Rgs 12 & 13 East.
 Set post to corner to fel sees 25 & 30 T. 16 N. Rgs 12 & 13 E.
 a Cottonwood 15 ins dia brs S 73 W 11 lks and a
 Sweet Gum 15 ins dia brs N 41 E 60 lks
 North along the east side of section 25 T. 16 N. R. 12 E.
 10 00 Box Elder 10 ins dia
 36 36 Set post corner to sees 24 & 25 from which a
 Box Elder 12 ins dia brs S 37 W 29 lks and a
 184 Hackberry 18 ins dia brs N 46 W 3 lks
 Land 1st rate. Timber Cottonwood Ash and Hackberry.
 Undergrowth switch cane.

Field notes Section 5 & 6 Township 15 N. R. 13 East.

- Set post corners to sees 4 5 8 & 9 T. 15 N. R. 13 E.
 Hackberry 18 ins dia brs N 16 E 50 lks and a
 Walnut 24 ins dia brs N 64 E 65 lks
 West on a true line between 5 & 8 T. 15 N. R. 13 E.
 26 64 Cottonwood 18 ins dia
 40 00 Set $\frac{1}{4}$ section post from which a
 Elm 12 ins dia brs S 33 W 8 lks and a
 Red Bud 8 ins dia brs N 12 E 19 lks
 60 27 Box Elder 24 ins dia
 80 00 Set post corner to sees 5 6 7 & 8 from which a
 Ash 24 ins dia brs S 74 E 40 lks and a
 Ash 18 ins dia brs S 40 W 26 lks
 Maple 18 ins dia brs N 78 W 42 lks and a
 Persimmon 18 ins dia brs N 29 W 48 lks
 Land the 1st half mile good, the rest overflows.
 Timber Ash Hickory Gum and Elm
 Undergrowth cane and vines.
 West between sees 6 & 7 T. 15 N. R. 13 E.
 26 30 Cottonwood 72 ins dia
 40 00 Set $\frac{1}{4}$ section post from which a
 Ash 6 ins dia brs S 42 E 10 lks and a
 Cottonwood 8 ins dia brs N 3 E 8 lks
 77 43 Willow 16 ins dia
 80 00 Set a post corner (on Buford's Lake) to
 Section 6 & 7 T. 15 N. R. 13 E., on the range line, a
 Cypress 12 ins dia brs N 20 W 11 lks and a
 185 Willow 16 ins dia brs S 47 W 3 lks
 Willow 16 ins dia brs S 50 E 45 lks and a
 Honey Locust 8 ins dia brs N 50 E 49 lks
 Land deep overflows. Timber Ash Cottonwood Willow
 and Cypress. Undergrowth Brush.
 North between sees 4 & 5 T. 15 N. R. 13 East.
 11 00 Left the cane and entered 10 feet of overflow
 18 50 Floats bayou brs west
 40 00 Set $\frac{1}{4}$ section post from which a

- Ash 10 ins dia brs S 55 E 11 and a
 Ash 8 ins dia brs S 40 W 35 lks
 45 00 Entered Cypress of Walker's Lake
 80 00 Set post corner to secs 4 & 5 T. 15 N. R. 13 E., and
 Secs 32 & 33 T. 16 N. R. 13., on the bank of Walker's Lake a
 Cypress 18 ins dia brs N 27 W 11 lks and a
 Cypress 16 ins dia brs N 85 E 26 lks
 Cypress 18 ins dia brs S 27 E. 23 lks and a
 Cypress 20 ins dia brs S 65 W 14 lks
 Land deep overflow. Timber Cypress and Elm.
 Undergrowth cane and briars.
 North between secs 5 & 6 T. 15. N. R. 13 E.
 34 30 Walker's Lake, Where
 Set post corner to frl secs 5 & 6 T. 15 N. R. 13 E., a
 Sycamore 10 ins dia brs S 88 W 25 lks and a
 Sycamore 18 ins dia brs S 33 E 43 lks
 Land deep overflow. Timber Cypress Willow & Sycamore.
 Undergrowth Brush.
 Meanders of Walker's Lake from the corner to secs 6 & 7
 T 15 N. R. 13 E., on the range line through section 6 T.
 15 N. R. 13 E.

186

- N 70 E 20 00 Chs
 N 65 E 35 50 "
 N 68 E 31 50 " to the corner to
 frl secs 5 & 6 T. 15 N. R. 13 East.
 Land swampy overflows 6 to 10 feet. Timber Cypress Cot-
 tonwood and Willow. Undergrowth Brush etc.
 Meanders from the corner to frl secs 5 & 6 through
 Section 5 T. 15 N. R. 13 East.
 N 70 E 42 50 Chs
 N 58 E 31 00 "
 N 45 E 18 00 " to the corner to
 frl secs 4 & 5 on the township line.
 Land low wet and swampy. Overflows. Timber Cypress
 Hackberry and Willow. Undergrowth brush and vines.

Field Notes Sections 30 31 & 32 T. 16. N. R. 13. East.

- North between secs 32 & 33 T. 16 N. R. 13 East
 81 Cypress 18 ins dia
 33 17 Entered a field brs east and west
 39 63 Left the field brs east and west
 40 00 Set 1/4 section post, on the bank of a dry bayou
 brs nearly east and west from which a
 Ash 18 ins dia brs N 37 W 60 lks and a
 Box Elder 18 ins dia brs N 22 E 65 lks
 40 41 Elm 8 ins dia
 40 75 Crossed dry bayou
 56 10 Entered a field brs north west and south east
 65 58 Left the field

- 80 00 Set post corner to sees 28 29 32 & 33 from which a
Elm 36 ins dia brs N 62 E 62 lks
Sycamore 30 ins dia brs N 37 W 169 lks
- 187 Elm 36 in dia brs S 20 W 165 lks and a
Box Elder 18 ins dia brs S 41 E 84 lks
West on a true line between sees 29 & 32 T. 16. N. R. 13 E.
- 5 21 Pawpaw 6 ins dia
- 11 60 Entered a field brs north east and south west
- 15 88 Left the field brs north and south
- 40 00 Set $\frac{1}{4}$ section post from which a
Box Elder 10 ins dia brs N 65 W 21 lks and a
Sycamore 18 ins dia brs S 30 W 101 lks
- 46 00 Elm 20 ins dia
- 80 00 Set post corner to sees 29 30 31 & 32 from which a
Ash 18 ins dia brs N 57 W 5 lks
Elm 20 ins dia brs S 29 W 22 lks
Hackberry 18 ins dia brs S 29 E 55 lks and a
Elm 20 ins dia brs N 57 E 87 lks
Land 1st rate. Timber Ash Cottonwood Elm and Box
Elder. Undergrowth cane.
South between sees 31 & 32 T. 16 N. R. 13 East.
- 3 16 Elm 20 ins dia
- 38 72 Intersected Walker's Lake, Where
Set post corner to frl sees 31 & 32 from which a
Maple 14 ins dia brs N 33 W 27 lks and a
Sycamore 18 ins dia brs N 29 E 67 lks
Land Overflows 4 to 8 feet.
Timber Ash Elm Cottonwood and Cypress.
West between sees 30 & 31 T. 16. N. R. 13 East.
- 3 44 Sycamore 10 ins dia
- 38 16 Intersected the east side of Walker's Lake, Where
Set post corner to frl sees 30 & 31 from which a
Cottonwood 20 ins dia brs S 72 E 36 lks and a
- 188 Hackberry 8 ins dia brs N 30 E 5 lks
Land overflows 4 to 10 feet. Timber Cottonwood & Ash.
North between sees 29 & 30 T. 16 N. R. 13 East.
- 8 11 Elm 18 ins dia
- 40 00 Set $\frac{1}{4}$ section post from which a
Sycamore 10 ins dia brs N 37 W 29 lks and a
Box Elder 10 ins dia brs N 17 E. 20 lks
- 43 27 Ash 12 ins dia
- 80 00 Set post corner to sees 19 20 29 & 30 from which a
Hackberry 18 ins dia brs N 57 E 80 lks
Sycamore 14 ins dia brs N 22 W 71 lks
Honey Locust 40 ins dia brs S 53 W 140 lks and a
Black Walnut 18 ins dia brs S 67 E 222 lks
Land 1st rate. Timber Black Walnut Elm Ash Hackberry,
Sycamore & Cottonwood. Undergrowth cane.
West between sees 19 & 30 T. 16. N. R. 13 East.

- 2 23 Elm 30 ins dia
 8 00 Passed a house about 50 yds to the left hand.
 40 00 Set $\frac{1}{4}$ section post from which a
 Elm 8 ins dia brs S 62 $\frac{1}{2}$ W 39 lks and a
 Box Elder 6 ins dia brs N 48 W 19 lks
 42 81 Cottonwood 12 ins dia
 78 15 Intersected the east bdy T. 16, N. R. 12, E., 105 lks
 North of the corner to secs 24 & 25 Where
 Set post corner to secs 19 & 30 T. 16, N. R. 13, E. a
 Sweet Gum 48 ins dia brs S 72 E 20 lks and a
 Ash 20 ins dia brs N 52 E 63 lks
 Land overflows from 2 to 5 feet. Soil 1st rate.
 Timber Walnut Ash Elm Oak and Cypress. Undergrowth
 cane.
 From the corner to frl secs 31 & 32 on the East side of

189 Walker's Lake, meander along said lake through sec 32
 township 16 N. R. 13 East.

S 83 E 19 00 Chs

S 55 E 29 00 "

S 65 E 12 00 "

S 70 E 23 00 "

S 30 E 10 00 " to the corner to

frl sections 32 & 33 T. 16, N. R. 13 East.

From the corner to frl secs 30 & 31 on the east bank of
 Walker's Lake, meander along the side of said lake through
 Sections 31 T. 16, N. R. 13, East.

S 57 E 16 60 Chs.

S 30 E 33 00 "

S 83 E 8 50 " to the corner to

frl secs 31 & 32 T. 16, N. R. 13, East.

From the corner to frl secs 25 & 30 T. 16 N. Rgs 12 & 13 E.
 on the east side of Walker's Lake and meander along the
 side of said lake through section 30 T. 16, N. R. 13, East.

S 41 E 50 32 Chs

S 51 E 906 " to the corner to

frl secs 30 & 31 T. 16, N. R. 13 East.

T. 15 N., R. 12 E Surveyed 1847 Vr. 8d 21 min E.

T. 16 N., R. 12 E Surveyed 1847 Vr. 7d 35 min E.

T. 15 N., R. 13 E Surveyed 1843 Vr. not shown

T. 16 N., R. 13 E Surveyed 1847. Vr. 7d 35 min E.

190 *Certificate of State Land Commissioner as to Field Notes.*

Office of Commissioner of State Lands.

I, F. E. Conway, duly commissioned and acting commissioner of
 State Lands in and for the State of Arkansas do hereby certify that
 the above and foregoing pages of typewritten matter contain a true
 and complete copy of the field notes for Sections 1 & 2 T. 15 N. R.
 12 E., Sections 25 26 & 35 T. 16, N. R. 12 E., Sections 5 & 6 T.

15 N. R. 13 E., and Sections 30 31 & 32 in T. 16 N. R. 13 East, all of which are now on file in my office.

Witness my hand and seal this 27th day of September, 1904.

F. E. CONWAY,

Commissioner of State Lands.

191

Objections by Plaintiff

Chancery Court of Mississippi County for Chickasawha District

JOANNA LITTLE, Plaintiff,

vs.

J. J. WILLIAMS et al., Defendants.

Comes the plaintiff by her attorney and objects to the evidence offered by defendant as contained in the alleged certificate of J. W. Colquitt, Commissioner of State Lands of Arkansas, because such certificate is not competent or admissible as evidence and it must be only a statement of opinion. The objection being made at the time such paper was offered as evidence is now hereby reduced to writing and the court is requested to rule on same or make the objections and ruling a part of the record in this cause.

HENRY CRAFT,

Att'y for Plaintiff

192

Decree

Mississippi County Chancery Court, Chickasawha District, March Term, 1907.

JOANNA LITTLE, Plaintiff,

vs.

J. J. WILLIAMS et al., Defendants.

Decree for Defendants.

Now on this day this cause coming on to be heard comes the plaintiff, Joanna Little, by her attorneys Henry Craft and Little & Buck, comes also the defendant, Mary Baker and W. T. Sugg, as heirs at law of the late E. G. Sugg, deceased, E. M. Huffman, J. H. Huffman, Mrs. M. C. Williams, Ada Huffman, Mattie Cassidy, Cora Crockett, Edna Huffman, and Mervin Huffman, as heirs at law of the late E. G. Huffman, deceased, Mrs. Katie Butt, as widow and A. H. Cross, Ida Cross and George Cross, as heirs at law of the late George Cross, deceased, S. J. Rogers, W. R. Barksdale, T. R. Hatfield, J. J. Williams and Mrs. Annie Hogan, by their attorneys S. S. Semmes, W. J. Driver and Armstrong & Gravette.

This is an action brought by the plaintiff Joanna Little, against the above named defendants, for the purpose of quieting the title to the S. ½ of Sec. 25. All of Sec. 36, T. 16 N. R. 12 E. and the

S. $\frac{1}{2}$ and the N. W. $\frac{1}{4}$ of Sec. 31, T. 16, N. R. 13 E. in Mississippi County, Arkansas.

This cause is heard upon the complaint, the answer and amended answer and the answer of Guardian Ad Litem and report of Attorneys Ad Litem, the depositions of F. M. Huffman, George Ruckner, Chas. P. Ruck, John Ruck, Churchill Ruck, James Hickman, Henry Paul W. H. Newson, J. S. Ruckin, and Wm. Metzger, and the exhibits to said depositions, a stipulation of Counsel to official notes and cut of survey and a copy of a map of Mississippi County, Arkansas published by the Government, a certified copy of a deed from the St. Francis Levee Board to Joanna Little, conveying

191 the lands in controversy, and the grant from the United States to the State of Arkansas of date of September 28th, 1850, as contained in the Digest of Statutes of Arkansas, and the act of Arkansas of 1893, conveying certain swamp and overflowed lands to the State to the St. Francis Levee Board.

And the cause having been fully heard and considered, the court is of the opinion that there is no equity in the complaint and now adjudge and decree that the complaint of the plaintiff be and is hereby dismissed and that plaintiff pay all costs herein expended to which decree plaintiff excepted at the time and prayed an appeal to the Supreme Court which is granted.

194 & 195

Certificate of Clerk.

Clerk's Certificate of Transcript.

STATE OF ARKANSAS,

County of Mississippi.

I, Clyde Robinson, Clerk of the Circuit Court within and for the county aforesaid do hereby certify that the above and foregoing 190 pages contain a full, true and complete copy of all papers on file in my office and from the records therein in the case of Joanna Little Plaintiff vs. J. J. Williams et al. defendants and determined at the March Term of the Chancery Court of the Chickasawha District of Mississippi County, Arkansas.

Witness my hand and official seal on this 7th day of June, 1907.

[SEAL.]

CLYDE ROBINSON, *Clerk.*

By R. B. MOLEN, *D. C.*

196 Mississippi Chy. Chickasawha Dist. E. D. Robertson, Ch.

No. 15.

JOANNA LITTLE, Appellant.

VS.

J. J. WILLIAMS et al., Appellees.

Transcript

Filed Aug. 13, 1907.

P. D. ENGLISH, *Clerk.*
By W. P. SADLER, *D. C.*

Appeal to Supreme Court.

Comes the plaintiff by her attorney and prays an appeal to the Supreme Court from the decree of the Mississippi Chancery Court rendered in this cause.

HENRY CRAFT,
Solicitor for Plaintiff.

Appeal granted and transcript filed August 13, 1907.

P. D. ENGLISH, *Clerk*,
By W. P. SADLER, *D. C.*

197 STATE OF ARKANSAS,
In the Supreme Court:

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 25th day, being the fourth Monday of November, A. D. 1907, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 2nd day of March, 1898, a day of said term:

JOANNA LITTLE, Appellant,
vs.
J. J. WILLIAMS et al., Appellees.

Appeal from Mississippi Chancery Court, Chickasawba District.

Motion to Advance & Affirm.

Come the appellees by their solicitors and file their motion to advance and affirm this case for non-compliance with rule IX of this court.

198 In the Supreme Court of Arkansas.

No. 15.

JOANNA LITTLE, Appellant,
vs.
J. J. WILLIAMS et al., Appellees.

Motion to Affirm the Decree of the Lower Court.

Come the appellees, J. J. Williams et al. in the above entitled cause, by their attorneys, S. S. Semmes and Will J. Driver, and respectfully move the court to affirm the decree of the lower court herein; and for grounds of their motion, appellees show:

That appellant has failed, within the proper time, to file any good and sufficient "Abstract" of the transcript in the cause as required by Rule IX of this court.

It does not appear that appellant's counsel, Mr. Craft, has undertaken to file any "Abstract" at all. And the filing by Mr. Norton, as amicus curiae, of what he calls, "Additional Abstract in behalf of appellant," in no way cures nor supplies the neglect of appellant to file this "Abstract."

1st. Because an Amicus curiae having no duties to perform towards, nor rights to claim in behalf of, any of the parties litigent, his acts are wholly unofficial.

2nd. Because this so-called, "additional abstract" was not filed thirty (30) days before the date (March 2d) set for the submission of the cause; nor was counsel for appellees furnished with a copy thereof, until the 17th day of February, within two weeks of the date of submission.

3d. Because, whilst this, so-called, "additional abstract," sets out in full the deposition of appellant's witness—Newson—in purporting to make an abstract of appellees' evidence, by stating it, in narrative form, it does so in such an abbreviated and confused manner, omitting much that is of material benefit to appellees, and leaving out entirely the deposition of the witness, Metzger, that the material statements of the witnesses, in many instances, are, either entirely left out, or cut off so short, or so obscured, as to place appellees' evidence in such an incomplete and unfair light, as to render it impossible for the court to arrive at a correct understanding of appellees' side of the case.

Respectfully submitted,

S. S. SEMMES,
WILL J. DRIVER,
Attorneys for Appellees.

(Endorsed on Back:) Joanna Little, Appellant, vs. J. J. Williams et al., Appellees. Motion to Affirm. Filed Feb. 27, 1908. P. D. English, Clerk. By W. P. Sadler, D. C.

200 STATE OF ARKANSAS,
In the Supreme Court:

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 25th day, being the fourth Monday of May, A. D. 1908, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 22nd day of June, 1908, a day of said term:

JOANNA LITTLE, Appellant,
vs.
J. J. WILLIAMS et al., Appellees.

Appeal from Mississippi Chancery Court, Chickasawba District.

Judgment.

This cause came on to be heard upon the transcript of the record of the Chancery Court of Mississippi County, Chickasawba District,

and was argued by solicitors, on consideration whereof it is the opinion of the court that there is no error in the proceedings and decree of said chancery court in this cause.

It is therefore ordered and decreed by the Court that the decree of said Chancery Court in this — rendered be and the same is hereby in all things affirmed with costs.

It is further ordered and decreed that said appellees recover of said appellant all their costs in this court in this cause expended and have execution thereof.

201

Opinion.

In the Supreme Court of Arkansas, June 22, 1908.

No. 60.

LITTLE

v.

WILLIAMS.

Statement by the Court.

This case involves a controversy concerning the title to a large body of unsurveyed and unoccupied land containing 1000 or 1200 acres of land within the meandered lines of what is known as Walker's Lake, according to the survey made in 1847 by the United States Government.

The plaintiff, Joanna Little, claiming to be in actual possession of the lands in controversy, instituted this suit in chancery against the defendants, J. J. Williams and others, to quiet her alleged title.

The plaintiff claims title to the lands through the following chain:

1. United States to State of Arkansas, act of Congress dated September 28, 1850, donating swamp and overflowed land.
2. State of Arkansas to Board of Directors St. Francis Levee District, act of the General Assembly dated March 29, 1893, donating all lands in the district owned by the State.
3. Board of Directors of St. Francis Levee District to plaintiff, deed dated March 11, 1903.

The defendants are the owners by mesne conveyances running back to the State of Arkansas and the United States of the fractional sections, according to the government survey, of land bordering on the meandered line of Walker's Lake, and claim title to the lands in controversy by virtue of their alleged riparian rights as such owners.

Walker's Lake is, and, at the time of the government survey, was a shallow, non-navigable lake. The testimony is conflicting as to the true boundaries of the lake and the character of the territory now in controversy—whether it was water or swamp land—at the time of the government survey. Testimony introduced by the plain-

202 tiff tends to establish the fact that the territory was swamp land at that time; and the testimony of defendants' witnesses tends to show that at that time the waters of the lake extended up to

the meandered lines of the survey, but have since then receded so as to leave the land dry.

The parties, in addition to introducing the plats and field notes of the government survey, and depositions of witnesses, entered into the following written agreement as to facts, which writing was a part of the record:

"In order to avoid labor and expense in taking testimony, it is agreed by counsel representing defendants that all the surveyed lands in the vicinity and locality of what would be S. $\frac{1}{2}$ of Sec. 25, the whole of Sec. 36, T. 16, R. 12 E. and N. W. $\frac{1}{4}$ and S. $\frac{1}{2}$ of Sec. 31, T. 16, R. 13 E., Mississippi County, Arkansas, if same were surveyed, were in September, 1850, swamp and overflow-lands, and passed to the State of Arkansas, under the grant of the United States, of date September 28, 1850, and that the townships, including Walker's Lake, as meandered on the map, — included by the Secretary of the Interior of the United States Government in the list of lands prepared by him and forwarded by him to the Governor of Arkansas, showing the lands which passed to the State under the grant of 1850, and that said lands embraced in said list were subsequently covered by patents from the Government of the United States. And it is further agreed, that the State of Arkansas never undertook to convey the said lands embraced within the meandered lines of Walker's Lake, except as same might have passed by operation of law to the defendants as riparian owners, prior to the land grant made by the State to the St. Francis Levee Board in 1893."

The chancellor, after hearing the evidence, dismissed the complaint for want of equity, and plaintiff appealed.

Opinion.

McCulloch, J. (after stating the facts):

203 The first question presented is one of fact whether at the time of the government survey in 1847 the land in controversy was a portion of the bed of Walker's Lake or whether it was swamp land; for if the former state of fact is found to have existed, then the title of the owners of adjoining lands extended to the center of the lake by virtue of their riparian rights as such owners and, since the recession or drying up of the water has left the land exposed, it belongs to them. See *Rhodes v. Cissel*, 82 Ark. 367, and cases therein cited.

Appellant was the plaintiff below seeking to quiet her alleged title and must succeed, if at all, upon the strength of her own title, and not upon the weakness of that of her adversaries. *Chapman & Dewey Land Co. v. Bigelow*, 77 Ark. 338. In other words, the burden of proof is upon her to show that the land in controversy was land and not lake bed at the time of the government survey.

In addition to that, the plats of the government survey and the field notes which accompany them, show that these lands then constituted the bed of the lake, and were within the meandered lines of the lake. This establishes, *prima facie*, the fact that the lands were

a part of the lake bed, and the burden is upon appellant to overcome it by proof to the contrary.

But, thus conceding the burden to be upon appellant, the testimony which she has adduced convinces us that she is correct in her contention as to this question of fact, and that the land in controversy was swamp land at the time of the government survey, and was not in the bed of the lake. The surveyors made mistakes in delimiting the boundary lines of the lake, and included a large amount of low, swampy land which the waters of the lake did not cover. These mistakes were not unreasonable ones, and do not demonstrate either fraud or gross carelessness on the part of the surveyors, for the evidence shows that there may have been grounds at that time to believe that the meander line followed the bank of the lake. The intervening territory between the meander line and the bank of the lake was undoubtedly of that intermediate character, low lands partly covered by water, about which the
204 surveyors could reasonably have been mistaken and which they may have concluded was the bed of a shallow part of the lake. There was a slash or low place along the meander line; and, as this may have been temporarily covered by water at the time, the surveyors followed its outer line, believing it to be the shore line of the lake.

We are satisfied, however, that a mistake was made in establishing this line as the shore line of the lake. Out of the testimony of all the witnesses who testify from recollection as to the condition of the lands and the boundaries of the lake many years ago, the preponderance lies, we think, with those who say that the land in controversy was swamp land, and not lake bed. In addition to this, the condition in which the undisputed evidence shows the land to be at this day and the character of the timber growing thereon convincing that it was not a portion of the lake bed in the year 1847. The present banks of the lake are well marked, and have not materially changed during the memory of those persons whose testimony on the subject preponderates. We will, therefore, treat it as established that mistakes were made in the survey and that this land was in fact swamp land and not lake bed. The real location of Walker's Lake was and is far inside the meander lines run by the surveyors. At some points the bank of the lake is over a mile from the surveyed meander line.

But, conceding this to be true, the fact remains that a meander line was surveyed which the field notes show was intended to indicate the shoreline of the lake. A body of water constituting a non-navigable lake existed then and still exists within the meander line, though a considerable distance inward from it. The plats of this survey were filed in the General Land Office of the United States, and were accepted and approved by that department of the government as correct. In running the meander lines the surrounding sections and parts of sections were necessarily made fractional and, under the swamp land act of 1850, surveyed lands in the township surrounding the lake were selected by the State. The selections were
205 approved by the Secretary of the Interior, and patents were issued to the State conveying the lands by descriptions "according to the official plats of the survey returned to the

General Land Office of the Surveyor General." The State of Arkansas has, from time to time, sold to individuals the surveyed lands and conveyed them by descriptions according to the plats.

Neither the land department of the United States nor of the State of Arkansas has ever questioned the correctness of the surveys, but, on the contrary, have up to the present time and do now treat them as correct, if we may view it in that light a failure to take any steps looking to a correction. Can an individual question the correctness of the surveys when neither the general government nor the State government has ever done so? Can an individual acquire and assert rights in these unsurveyed lands which the government has never asserted against the riparian rights of the adjoining owners.

The Supreme Court of the United States as early as the case of *Spencer v. Lapsley*, 20 How. 264, decided that "the issue of the grant or patent conveys the title, and questions of fraud, or irregularity, or excess in the survey, cannot be raised by other parties than the government."

Mr. Justice Lamar, in delivering the opinion of the court in *Cragin v. Powell*, 128 U. S. 691, said: "That the power to make and correct surveys of the public lands belongs to the political department of the government and that, whilst the lands are subject to the supervision of the General Land Office, the decisions of that bureau in all such cases, like that of other special tribunals upon matters within their exclusive jurisdiction, are unassailable by the courts, except by a direct proceeding; and that the latter have no concurrent or original power to make similar corrections, if not elementary principles of our land law, is settled by such a mass of decisions of this court that its mere statement is sufficient. * * * The reason of the rule, as stated by Mr. Justice Catron in the case of *Haydel v. Dufesne*, 17 How. 30, is that 'great confusion and litigation

206 would ensue if the judicial tribunals, State and Federal, were permitted to interfere and overthrow the public surveys on no other ground than an opinion that they could have the work in the field done and divisions made more equitably than the department of public lands could do.'"

In *Russell v. Maxwell Land Grant Co.*, 158 U. S. 253, Mr. Justice Brewer, speaking for the court, said: "In the nature of things a survey made by the government must be held conclusive against collateral attack in controversies between individuals. There must be some tribunal to which final jurisdiction is given in respect to the matter of surveys, and no other tribunal is so competent to deal with the matter as the Land Department. None other is named in the statutes. If in every controversy between neighbors the accuracy of a survey made by the government were open to question, interminable confusion would ensue."

The same learned judge, in delivering the opinion of the court in *Whitaker v. McBride*, 197 U. S. 510 said: "The official surveys made by the government are not open to collateral attack in an action at law between private parties."

Mr. Farham in his work on *Water and Water Rights* (vol. 2 sec. 422) states the same doctrine as follows:

"Where a patent issues for a fractional lot, appearing by the plat of the United States survey to be bounded on one side by a meandered lake, the patent is not void so far as it purports to convey the land under the water, though it was an error, in the surveyor to treat the tract covered by water as a lake to be meandered, instead of land to be surveyed. Conceding the patent to that extent to be void, it can be avoided only by the United States in a suit to which the patentee is a party. The land passed and a private individual cannot complain."

The following decisions of the Supreme Court of the United States announce in effect, the same principle: *Michigan Land & Timber Co. v. Rust*, 169 U. S. 589; *Hammert v. Avery*, 195 U. S. 480; *Oregon v. Hitchcock*, 202 U. S. 60.

207 The decisions of this court in *Smith v. Hollis*, 46 Ark. 15, and *Williamson v. Baugh*, 71 Ark. 191, are based upon the same principle. The court in these cases held that the decision of the Secretary of the Interior in determining whether or not certain lands came within the terms of the swamp land grant was, in the absence of fraud, conclusive, and could not be overturned in a collateral proceeding.

The legal effect of the patents to the State of the fractional sections and parts of sections surrounding the meandered line of the lake, according to the official plats of the public survey, was to convey all riparian rights and by virtue thereof to vest *prima facie* title to the bed of the lake, as shown on the plats, from meandered shore lines to center. The conveyances executed by the State in turn to its grantees had the same effect. *Harlin v. Jordan*, 140 U. S. 370; *Mitchell v. Smale*, 140 U. S. 406.

The title to the lands in controversy has not passed out of the United States to the State and its grantees in that way, it has never passed at all. Though the Swamp Land Act has been held to be a grant in present, the legal title did not pass until the lands were duly selected as such and the patents were delivered. *Rogers Locomotive Works v. American Emigrant Co.*, 164 U. S. 559; *Michigan Land Co. v. Rust*, 168 U. S. 589; *Brown v. Hitchcock*, 173 U. S. 473; *Ogden v. Buckley*, 116 Iowa 352; *Finstan v. Metcalf*, 40 Miss. 54.

These lands have never been selected or patented at all unless the patents to the adjoining fractional sections embraced them.

The State of Arkansas, by the compromise settlement contract entered into with the United States, which was approved by act of the General Assembly of Arkansas, March 10, 1897, and by act of Congress, April 29, 1898, expressly relinquished her claim to any unpatented swamp land.

So the title to these lands is either in the owners of the adjoining lands by virtue of their riparian rights according to the legal purport of the patents and subsequent conveyances, or it remains in the United States Government. Until the Government elects to correct the mistakes in the original survey and assert claim to the
208 lands, no one can complain or dispute the title of the holders of the *prima facie* title. *Schlosser v. Cruikshank*, 96 Iowa 414; *Ogden v. Buckley*, 116 Iowa 352; *Minnesota Land Co. v. Davis*.

40 Minn. 455; Lamphrey v. Mead, 54 Minn. 290; Whittaker v. McBride, 197 U. S. 510.

Appellant, in no event, has any shadow of title, for if the State took title as riparian owner under the patent to the adjoining land, she in like manner conveyed it to her grantees, and had no title to donate to the levee board. Towell v. Etter, 69 Ark. 34; Jeffries v. East Omaha Land Co. 134 U. S. 178; 10 Sup. Court 518.

Whether or not the State can now correct any mistake as to the quantity of land conveyed by her patent to individuals is not presented in this case, and we therefore refrain from any discussion on that point.

The case of Chapman & Dewey Land Co. v. Bigelow, 77 Ark. 338, has no application to the facts of the present case, and is not controlling. In that case the meander line was run by the government surveyors along the bank of a stream, and title was claimed under a patent of lands bordering on this meandered line, by virtue of riparian rights, to lands lying beyond the body of water meandered. This court refused to sustain the claim, holding that no title passed under the patent to lands lying beyond the meandered stream.

Neither do Horn v. Smith, 159 U. S. 40, Niles v. Cedar Point Club, 175 U. S. 300, nor French-Glenn Live Stock Co. v. Springer, 185 U. S. 47, have any bearing on the present case. They are cited in the Bigelow case, and the facts of each bring them all within the same class of cases, but they have no controlling force here because of the difference in the facts.

We conclude that the decree of the chancellor is correct, and the same is in all things affirmed.

209

Petition for Rehearing.

STATE OF ARKANSAS,

In the Supreme Court:

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 25th day, being the fourth Monday in May, A. D. 1908, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 6th day of July, 1908, a day of said term:

JOANNA LITTLE, Appellant,

vs.

J. J. LITTLE et al., Appellees.

Appeal from Mississippi Chancery Court, Chickasawba District.

Comes the appellant by attorney and files a petition for rehearing, and prays for time in which to file briefs in support of same. Said appellant is by the court granted until the 27th day of July in which to file such briefs.

In the Supreme Court of Arkansas.

JOANNA LITTLE, Appellant,

VS.

J. J. WILLIAMS et al., Appellees.

Motion to Rehear.

Appellant moves the court that this cause be reheard and the judgment of the court reversed and for cause says:

First. That in holding that the surveyors made a mistake in running the meander line, the court overlooked the purpose of a meander line, which is to fix the quantity of high land for which a purchaser must pay in buying from the government; such lines are sometimes boundaries but generally not boundaries; and meander lines are properly run as well when they leave low or marshy ground between the line and the water, as when they follow the water.

Second. The court was misled by following a line of authorities relative to surveys which dealt with lines run as boundaries and not one of which dealt with meander lines.

Third. That it is error to extend the rule which permits shore owners to divide a lake bed when the lake has dried up, and apply it to an area which has never been a part of the lake bed, but outside of it, and the lake remaining substantially as at the time of the survey.

Fourth. The court erred in holding that the legal title to swamp lands could not pass to the State without a patent from the Federal Government.

Fifth. The court erred in failing to hold that an area such as is involved in this case is sufficiently identified to satisfy the requirements of the swamp land act when it is meandered out as a shallow non-navigable lake.

Sixth. That the court erred in holding that the State could only acquire title to the locus in quo by the doctrine of riparian rights and that it had not acquired such title under the swamp land act and

the identification as swamp land by the meandering as a

211 shallow non-navigable lake.

Seventh. The court erred in holding that if the State acquired the locus in quo by the doctrine of riparian rights, it parted with its title by the same rule when it sold the fractional sections abutting on the meander line.

Eighth. That the court erred in failing to hold that the officials charged with the sale of the swamp lands belonging to the State were at all times acting under a limited authority and were without power to pass title, (by the sale and transfer of a fractional section abutting on the meander line) to an additional quantity of land lying on the opposite side of the meander line.

Ninth. That the court erred in holding that the case of *Towell v. Etter*, (69 Ark. 34) was applicable to the case at bar that being a cases in which no property of the State was sold, and the question of

the power of the officials to dispose of the State's lands could not have arisen.

Tenth. That the court erred in failing to give significance to the stipulation in the case to the effect that: "the townships including Walker's Lake as meandered on the map, were included by the Secretary of the Interior of the United States Government in the list of lands prepared by him and forwarded by him to the Governor of Arkansas showing the lands which passed to the State under the grant of 1850, and the said lands embraced in said list were subsequently covered by patents from the Government of the United States.

Eleventh. That the court erred in holding that the compromise settlement between the United States and the State of Arkansas could have any bearing on this case; that settlement having been made subsequent to the donation of lands by the State to the St. Francis Levee Board, whereby it acquired vested rights.

Twelfth. That the court erred in failing to hold that the meander line was the limit of the rights acquired by the purchase from the State of the so-called shore.

HENRY CRAFT,
Solicitor for Appellant.
N. W. NORTON,
Amicus Curie.

212 Henry Craft, Counsel for Appellant, and N. W. Norton, amicus curie, hereby certify that in their judgment the above motion is well taken.

HENRY CRAFT,
Counsel for Appellant.
N. W. NORTON,
Amicus Curie.

(Endorsed on back.) Joanna Little v. J. J. Williams et al. Petition to rehear. Filed July 3, 1908. P. D. English, Clerk. Served.

213 STATE OF ARKANSAS.

In the Supreme Court:

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 25th day, being the fourth Monday of May, A. D. 1908, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 14th day of September, 1908.

JOANNA LITTLE, Appellant,

vs.

J. J. WILLIAMS et al., Appellees.

Appeal from Mississippi Chancery Court, Chickasawba District.

The petition for rehearing having been filed in the cause herein dated within the time and in the manner required by law, the said cause is now submitted on the said petition and by the Court taken under advisement.

214 STATE OF ARKANSAS,
In the Supreme Court:

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 25th day, being the fourth Monday of May, A. D. 1908, in the City of Little Rock, at the Court house, the following proceedings were had, to-wit: On the 9th day of November, 1908, a day of said term:

JOANNA LITTLE, Appellant,
vs.
J. J. WILLIAMS et al., Appellees.

Appeal from Mississippi Chancery Court, Chickasawba District.

Petition for Rehearing Denied.

Being fully advised, the petition for rehearing filed herein is by the court denied. Additional opinion filed by McCulloch, J.

215 *Opinion on Rehearing.*

McCULLOCH, J.:

The decision is vigorously assailed on the ground that we were mistaken in holding that the unsurveyed land between the meandered line and true shore line of this lake was not patented by the United States to the State of Arkansas. Courts take cognizance, judicially, of the general system of government surveys and, accordingly, we know that lands are surveyed and platted into sections and parts of sections and into fractionals where they abut on streams or other bodies of water. The record in this case contains a plat and the field notes of the governmental surveys of the land surrounding Walker's Lake, and they confirm the facts of which we are already judicially cognizant. *Bittle v. Stuart*, 34 Ark. 224; 7 Enc. Ev. pp. 987, 988; *Knabe v. Burden*, 78 Ala. 436; *Ledbetter v. Borland*, 128 Ala. 418; *Peck v. Sims*, 120 Ind. 345; *Muse v. Richards*, 70 Miss. 581; *Stanford v. Bailey* (Ga.) 60 S. E. 161.

Description of lands, according to terminology employed in the system of governmental surveys and plats of lands, is necessarily a reference to the plats of those surveys; for those terms are meaningless unless considered with reference to the surveys and plats. There is nothing known of townships, sections and parts of sections of lands except such as are described in the plats of the government surveys. Therefore, giving the word township, used in the stipulation of facts, the meaning which we must attribute to the parties who employed the term, it has reference to the townships surveyed and platted by the government surveyors, and means the townships according to the surveys and plats. A conveyance of the township "according to plat of the surveys" does not include lands which do not appear on the plat of the surveys. We do not mean to hold that the unsurveyed land could not have been selected as swamp

lands and patented to the State by the use of proper descriptive terms in the patent, but this was not accomplished by reference to townships, sections or parts thereof according to the plat of the surveys when the unsurveyed land did not appear on the 216 plats at all. The plats showed it to be water and not land.

We are convinced, also, that even if we discard the technical meaning of the word township, the language of the stipulation is susceptible of no other reasonable construction than that only the surveyed land appearing on the plat of the public survey was meant to be covered by the agreement. It is evident that the parties meant only the surveyed lands appearing on the plat, leaving all questions as to the character of the unsurveyed territory and title thereto open to further proof and adjudication. We find nothing to indicate that appellees' counsel meant to concede that if the locus in quo should be found to have been land and not lake bed at the time of the survey in 1847, it was included in the patents from the United States to the State of Arkansas and belonged to appellant. In this respect, the stipulation deals only with the surveyed land. It reads that "all of the surveyed lands in the vicinity and locality * * * were, in September, 1850, swamps and overflowed lands and passed to the State of Arkansas under the grant of the United States of date Sept. 28, 1850, and that the townships including Walker's Lake, as meandered on the map, were included by the Secretary of the Interior of the United States government in the list of lands prepared by him and forwarded by him to the Governor of Arkansas, showing the lands which passed to the State under the grant of 1850, and that said lands embraced in said list were subsequently covered by patents from the government of the United States."

Now, as it was only stipulated that the surveyed lands passed to the State as swamp and overflowed lands under the act of Congress, it would be unreasonable, in the absence of a clear expression, to construe the meaning of the stipulation to be that the unsurveyed lands were patented by the United States to the State.

We therefore think that we were correct in saying that "the legal effect of the patents to the State of the fractional sections and parts of sections surrounding the meandered lines of the lake, according to the official plats of the public survey, was to convey all riparian rights and by virtue thereof to vest prima facie title 217 to the bed of the lake, as shown on the plats, from meandered shore line to center," and that "if title to the lands in controversy has not passed out of the United States to the State and its grantees in that way, it has never passed at all."

We have not been unmindful of the earnest reliance of counsel upon the case of *Kean v. Calumet Canal Co.* 190 U. S. 452, but we do not think that the case supports their contention. On the contrary, we think that the views already expressed are in conformity with the conclusion reached in that case. The facts there were that the land in controversy at the time of the survey made by the government, as well as at the time of the issuance of the patent to the

State, was the bed of a non-navigable lake duly meandered by the survey and situated within the bounds of the section of land patented. The court held that the title to the bed of the lake passed to the State under the patent, and in turn to the State's grantee under its patent, basing that conclusion upon the decisions in *Hardin v. Jordan*, 110 U. S. 371, and *Mitchell v. Smale*, 119 U. S. 406. It is apparent, therefore, that the court based its conclusion as to the passage of title under the patent upon the fact that the title passed as a riparian right or as an appurtenant to the surveyed land which was conveyed. This is apparent when we consider the language used by the court in the two former cases.

In *Hardin v. Jordan*, *supra*, Mr. Justice Bradley, speaking for the court said: "It has never been held that the lands under water, in front of such grants, are reserved to the United States, or that they can be afterwards granted out to other persons, to the injury of the original grantees. The attempt to make such grants is calculated to render titles uncertain, and to derogate from the value of natural boundaries, like streams and bodies of waters."

In *Mitchell v. Smale*, *supra*, the same learned Justice speaking for the court said: "Our general views with regard to the effect of patents granted for lands around the margin of a non-navigable lake, and shown by the plat referred to therein to bind the lake, were expressed in the preceding case of *Hardin v. Jordan*, and need not be repeated here. We think it a great hardship, and one not to be endured for the government officers to make new surveys and grants of the beds of such lakes after selling and granting the lands bordering thereon, or represented so to be. It is nothing more nor less than taking from the first grantee a most valuable, and often the most valuable part of his grant."

It therefore appears from the above quotations that the court held that the title to the bed of the lake passed because of the riparian or appurtenant rights, for it was not surveyed out as land and was not described on the plat as land. In other words, it was conveyed as lake bed and not as land.

And so it is in the present case: If the title to the unsurveyed land in controversy passed at all from the general government to the State under the patents, it passed by virtue of riparian rights for it was designated on the plats as water, not land; and if the title did pass in that way, the State's title in like manner passed to its vendees.

Counsel for the Board of Directors of St. Francis Levee District has filed a brief, as *amicus curia*, calling attention to the fact that the rights of the district in unsurveyed lands claimed to have been donated by the act of 1893 should not be prejudiced by a decision that the compromise between the State and the United States affected its right to lands donated prior to the compromise. The district, not being a party in the case, its rights cannot be adjudicated herein. The compromise is referred to in the opinion merely to call attention to the fact that the State has thereby released her claim to all unpatented swamp lands, and can not now make selec-

219 tions of swamp land and call for patents for the purpose of correcting mistakes in surveys. If the State did not obtain title under the patents, it is now too late for her to procure title.

Appellant claims title as vendee of the levee district, but, conceding (though not deciding) that the donation act of 1893 could be operative as a grant of the State's claim or title to unpatented swamp lands, and that the State could not thereafter release the claim to the general government, yet the right is not conferred upon appellee to question the accuracy of the original survey, and disturb the prima facie title of prior patentee of the adjoining land.

It may be that the donation act of 1893 conveyed to the levee district the State's equitable title under the Swamp Land — of 1850 to unsurveyed lands situated, for instance, like those in the case of Chapman & Dewey Land Co. v. Bigelow, supra, the prima facie title to which had *been* not been created by patent, and that the State could not, subsequent to the donation to the levee district, release the claim of the general government. But we are not required, by the facts of this case to decide that question.

After a very careful re-examination of the case, bearing in mind the importance and magnitude of the questions and interests involved, we are of the opinion that we reached the correct conclusion on the former hearing. The petition for reconsideration is therefore denied.

220

Certificate of Clerk.

SUPREME COURT.

State of Arkansas, ss:

I, Peyton D. English, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the cause of Joanna Little, Plaintiff, vs. J. J. Williams et al., Defendants, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, this May --, 1910.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas,
By W. P. SADLER, D. C.

JOANNA LITTLE

VS.

J. J. WILLIAMS et al.

Assignment of Errors on Writ of Error to the Supreme Court of the State of Arkansas and Prayer for Reversal.

Now comes the said plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Arkansas in the above entitled matter, there is manifest error in this, to-wit:

The decree of the Supreme Court of the State of Arkansas affirming the decree of the Chancery Court of Mississippi County, Arkansas, and dismissing the bill of complaint, was erroneous, and it was error to dismiss the bill because:

1st.

The Court erred in holding that the land in question did not pass to the State of Arkansas under, and by operation of, the Act of Congress approved Sept. 28, 1850 (9 Stat. at L. 519, Ch. 84 U. S. Comp. Stat. 1901, p. 1591), and the patents issued by the United States to the State of Arkansas, covering the whole of the two townships which embraced the land in question.

2nd.

The Court erred in its construction of, and the effect to be given to the Act of Congress of Sept. 28, 1850, and the patents of the United States covering the two townships embracing the land in question, as indicated by the following language, found in its opinion, to-wit:

"In running the meander lines, the surrounding sections and parts of sections were necessarily made fractional; and under the Swamp Land Act of 1850, surveyed land in the townships surrounding the lake was selected by the state. The selections were approved by the Secretary of the Interior, and patents were issued to the State conveying the land by description according to official plats of the survey returned to the general land office of the Surveyor General."

3rd.

The fundamental error of the Court, and the one upon which its decree must necessarily rest, is in its construction and adjudication that unsurveyed (in the sense of unsectionized) land did not pass to the State under the grant of 1850, or under the patents issued to the State calling for two whole townships.

4th.

It was error for the Court to construe the patents issued by the Government of the United States to two whole townships, as only covering the sectionized land in said townships, as indicated by the following language contained in the opinion:

"The legal effect of the patents to the State of the fractional sections, and parts of sections surrounding the meandered lines of the lake, according to the official plats of the public survey, was to convey all riparian rights and by virtue thereof to vest *prima facie* title to the bed of the lake, as shown on the plats, from meander shore lines to center. The conveyances executed by the state in turn to its grantees, had the "same effect."

5th.

The Court erred in its construction, and interpretation, of the patents issued by the United States to the State of Arkansas conveying the whole of the township, as indicated by the following language in its opinion, to-wit:

"A conveyance of the township according to plat of the surveys does not include lands which do not appear on the plat of the survey * * *. The plat showed it to be water and not land."

6th.

The Court erred in holding that the Government survey of Mississippi County, Arkansas, introduced for the purpose of locating and defining the two townships which embraced Walker's Lake (for which patents had been issued by the Government to the State) was controlling on the proposition as to what was land and what water; especially, after it had found as matter of fact that the surveyors had been mistaken as to the location of the lake.

Wherefore Joanna Little prays that a writ of error from the Supreme Court of the United States may issue to the Supreme Court of the State of Arkansas, and further prays that the Supreme Court of the United States will reverse the said final order and judgment of the Supreme Court of the State of Arkansas, and that she further may have such other special and general relief as may be proper and just.

This the 28th day of April, 1910.

HENRY CRAFT,
Attorney for Joanna Little, Petitioner.

Filed April 11/1900.

PEYTON D. ENGLISH, *Clerk.*

Petition for Writ of Error.

In the Supreme Court of the State of Arkansas.

No. 15.

JOANNA LITTLE

VS.

J. J. WILLIAMS et al.

To the Honorable Edgar A. McCulloch, Chief Justice of the Supreme Court of Arkansas:

Now comes Joanna Little, the above named Complainant, and Appellant, and respectfully shows that heretofore she filed her bill in the Chancery Court of Mississippi County, Arkansas, against J. J. Williams and others to quiet her title and possession to certain swamp and overflowed lands in said County, embraced within the meander lines of Walker's Lake as shown on the Government map of the survey of 1847.

Petitioner in her said bill alleged her claim of title to said property as depending 1st upon the grant of the United States Government to the State of Arkansas as embodied in the Act of Congress of Sept. 28, 1850, by which all the swamp and overflowed land in the State of Arkansas, then belonging to the Government of the United States, passed to said State. 2nd upon the Act of the General Assembly of the State of Arkansas of date M'ch 29, 1893, donating all lands in the district embracing the lands in question to the Board of Directors of the St. Francis Levee District. 3rd upon the deed of conveyance made to her by the Directors of said Levee District of date M'ch 11, 1903.

The said Chancery Court dismissed Petitioner's bill, and she appealed the cause to the Supreme Court of the State of Arkansas, which is the highest Court of law or equity in said State of Arkansas. The cause was heard in said Court, and a final decree entered therein on the 22 day of June, 1908, by which the decree of the trial Court was affirmed.

Petitioner is much aggrieved by said final decree, and is advised the cause presents a federal question, in this, viz:

By her Bill of Complaint petitioner alleged that the land which she claimed, and of which she was in possession, was shown as lake bed on the map of the Government survey, but that "Walker's Lake," as indicated on said map, was never a permanent lake, but only an overflow water lake, which had disappeared when the levees were built, restraining the waters of the Mississippi River, and that therefore the said lands, claimed by Petitioner, were "swamp and overflowed" lands which passed from the United States to the State of Arkansas by operation of the grant of 1850.

Defendants by their answer filed in the cause claimed to be owners of the land in question, solely by reason and operation of their riparian rights. They claimed to own fractional sections abutting

upon the lake, when, as they say, it was a body of water, and that by reason of the recession of the water their ownership was extended so as to embrace the land in controversy.

The parties further presented, and made part of the record a stipulation as to certain facts, including certain acts of the Government of the United States in carrying into effect the Act of Congress of Sept. 28th, 1850, which stipulation was as follows, to-wit:

226 "In order to avoid labor and expense in taking testimony, it is agreed by counsel representing defendants that all of the surveyed lands in the vicinity and locality of what would be south 1/2 of Section 25, the whole of Section 36, Township 16, Range 12 East, and northwest quarter and south half of section 31, township 16, range 13 East, Mississippi County, Arkansas, if same were surveyed, were in September, 1850, swamp and overflowed lands, and passed to the State of Arkansas under the grant of the United States of date September 28, 1850, and that the townships including Walker's Lake, as meandered on the map, were included by the Secretary of the Interior of the United States Government in the list of lands prepared by him and forwarded by him to the Governor of Arkansas, showing the lands which passed to the State under the grant of 1850, and that said lands embraced in said list were subsequently covered by patents from the Government of the United States.

"And it is further agreed that the State of Arkansas never undertook to convey the said lands embraced within the meandered lines of Walker's Lake, except as same might have passed by operation of law to the defendants as riparian owners, prior to the land grant made by the State to the St. Francis Levee Board in 1893."

The Supreme Court of the State of Arkansas had before it, in the manner just stated, the fact that petitioner claimed title and ownership to the land described in the bill, under the provisions and operation of the Act or grant of the Congress of the United States, and the patents issued by the United States Government to the State of Arkansas conveying the whole of the two townships which embrace and include the territory designated on the map as Walker's Lake, which land included the land in controversy.

It was necessary for the Supreme Court of the State of Arkansas, in disposing of the question of title and ownership in said lands to pass upon and construe the Act of Congress and to pass upon and adjudge the effect of the patents issued by the Government to the State of Arkansas for the two townships which included the land in controversy.

227 The Supreme Court of the State of Arkansas, in passing upon these questions, held that petitioner acquired no title to the lands, because her vendor, the St. Francis Levee District and its grantor, the State of Arkansas, acquired no title under the Act or grant of Congress, or under the patents, which issued according to the stipulation, covering the townships, because, under the grant of 1850 and the patents which afterwards issued, only lands passed which were by, and according to the government surveys and maps, indicated as surveyed lands; that in as much as the locus in quo

was by such maps and survey indicated as lake bed, it did not pass to the State of Arkansas, but remained in the Government.

The Supreme Court of Arkansas specifically decided, as matter of fact, that the locus in quo was never lake bed, and that "Walker's Lake" was, and within the memory of man, had always been, a mile or more West of the place indicated by the map and government survey, and therefore did not conflict with the property in question.

The Court having thus determined the land in question to have come within the specification of "Swamp and overflowed" land when the Act of Sept. 28, 1850 was passed, it follows that petitioner was entitled to the full benefit and operation of that grant in connection with the establishment of her title.

Petitioner is advised and alleges, that the decision of the Supreme Court of Arkansas invalidates the patents issued by the
228 United States Government covering the whole of the two townships which embrace "Walker's Lake," as shown on the map of the Government survey, in as much as it holds that no title passed thereunder to the State of Arkansas, to a portion of the lands embraced in those townships.

Wherefore Joanna Little petitions and prays that a writ of error from the Supreme Court of the United States may issue in this behalf to the Supreme Court of the State of Arkansas for the correction of the errors so complained of, and that a transcript of record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 11th day of April, 1910.

HENRY CRAFT,

Solicitor for Joanna Little, Petitioner.

Filed April 11, 1910.

PEYTON D. ENGLISH, *Clerk.*

229 In the Supreme Court of the State of Arkansas.

No. 15.

JOANNA LITTLE

VS.

J. J. WILLIAMS.

Writ of Error Allowed.

The writ of error as prayed for in the foregoing petition is hereby allowed on this the 25 day of April, A. D. 1910, and the bond to be given by petitioner is fixed at the sum of One Thousand (\$1000.00) Dollars.

Dated at Little Rock, State of Arkansas, on this the 25th day of April, 1910.

E. A. McCULLOCH,

*Chief Justice of the Supreme Court
of the State of Arkansas.*

Filed in my office this the 25th day of April, A. D. 1910.

PEYTON D. ENGLISH,
Clerk Supreme Court, State of Arkansas.

230

In the Supreme Court of the State of Arkansas.

No. 15.

JOANNA LITTLE

VS.

J. J. WILLIAMS et al.

Bond on Writ of Error.

Know all men by these presents: That we, Joanna Little as principal, and Henry Craft of Memphis, Tennessee, as surety, are held and firmly bound unto J. J. Williams and others, in the sum of One Thousand (\$1,000.00) Dollars to be paid to the said obligees, their successors, representatives and assigns; to the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals, and dated this 11th day of April, 1910.

Whereas the above named plaintiff in error hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action in the Supreme Court of the State of Arkansas, now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute her said writ of error to effect, and answer all costs and damages if she shall fail to make good her plea, then this obligation shall be void; otherwise to remain in full force and effect.

JOANNA LITTLE.

By HENRY CRAFT, *Att'y.*
HENRY CRAFT, *Surety.*

231 Signed, sealed and delivered in the presence of
S. G. CHILDERS.

STATE OF TENNESSEE,
County of Shelby:

On this 11th day of April, 1910, before me personally appeared Henry Craft, to me known to be the person described in, and who executed the foregoing bond, and acknowledged that he executed the same as his free act and deed.

[SEAL.]

S. G. CHILDERS,
Notary Public, Shelby County.

I hereby approve the foregoing bond and Surety thereon. This
25th day of April, 1910.

E. A. McCULLOCH,
*Chief Justice of the Supreme Court
of the State of Arkansas.*

Filed April 25th, A. D. 1910.

PEYTON D. ENGLISH, *Clerk.*

Writ of Error.

Original.

In the Supreme Court of the State of Arkansas.

No. 15.

JOANNA LITTLE

vs.

J. J. WILLIAMS et al.

THE UNITED STATES OF AMERICA, ss.:

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Arkansas, Greeting:

Because of the record and proceedings, as also in the rendition of the decree which is in the Supreme Court of the State of Arkansas before you, or some of you, being the highest Court of law or equity of said State in which a decision could be had in the said suit between Joanna Little, Complainant, and J. J. Williams, Mary E. Baker and W. T. Sugg, heirs at law of the late E. G. Sugg, deceased, E. M. Huffman, J. H. Huffman, Mrs. N. C. Williams, Ada Huffman; Mattie Cassidy, Cora Crockett, Edna Huffman, Floyd Huffman and Mervin Huffman, as heirs at law of the late E. G. Huffman, deceased, Mrs. Kate Butt, as widow, and A. H. Cross, Ida Cross and George Cross, as heirs at law of the late George Cross, deceased, S. J. Rogers, W. R. Barksdale, T. H. Hatfield and Mrs. Annie Hagan, Defendants, wherein was drawn in question the validity of a treaty, or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the grounds of being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity, or wherein was drawn in question the constitution, or a clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and a decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Joanna Little as by her complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 28th day of May, 1910, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being in-

spected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 28th day of April, in the year of our Lord, 1910.

[The Seal of the Circuit Court, Western Division of East. Dist. Ark., U. S. A.]

W. P. FEILD,
Clerk of the Circuit Court of the United ———
for Eastern District of Arkansas,
By W. PRESLEY FEILD, D. C.

Filed April 28, A. D. 1910.

PEYTON D. ENGLISH, *Clerk.*

234

Certificate of Lodgment.

SUPREME COURT,

State of Arkansas, ss:

I, Peyton D. English, clerk of the said court, do hereby certify that there was lodged with me as such clerk on April 25, 1910, in the matter of Joanna Little versus J. J. Williams et al.

1. The original bond of which a copy is herein set forth.

2. Two copies of the writ of error, as herein set forth—one for each defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this May, 1910.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas,
By W. P. SADLER, D. C.

235

*Citation.**Original.*

In the Supreme Court of the State of Arkansas.

No. 15.

JOANNA LITTLE

vs.

J. J. WILLIAMS et al.

THE UNITED STATES OF AMERICA, *vs.*

To J. J. Williams, Mary E. Baker and W. T. Sugg, as heirs at law of the late E. G. Sugg, deceased; E. M. Huffman, J. H. Huffman, Mrs. N. C. Williams, Ada Huffman, Mattie Cassidy, Cora Crockett, Edna Huffman, Floyd Huffman and Mervin Huffman, as heirs at law of the late E. G. Huffman, deceased; Mrs. Kate Butt, as widow, and A. H. Cross, Ida Cross and George Cross, as heirs at law, of the late George Cross, deceased; S. J. Rogers, W. R. Barksdale, T. H. Hatfield, and Mrs. Annie Hagan, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Arkansas, wherein Joanna Little is the plaintiff in error and you are defendants in error, to show cause if any there be, why the decree rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edgar A. McCulloch, Chief Justice
236 of the Supreme Court of the State of Arkansas this 28th day
of April in the year of our Lord One Thousand Nine Hun-
dred and Ten.

E. A. McCULLOCH,
*Chief Justice of the Supreme Court
of the State of Arkansas.*

Attest with seal.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH, *Clerk.*

Copy of the within citation received this the 2nd day of May,
A. D. 1910, and service thereof accepted on behalf of all parties
mentioned as defendants.

S. S. SEMMES,
W. J. DRIVER,
Attorney- of Record for Defendants in Error.

Filed May 20, 1910.

P. D. ENGLISH, *Clerk,*By W. P. SADLER, *D. C.*

MAPS

TOO

LARGE

FOR

FILMING

237 UNITED STATES OF AMERICA,
Supreme Court of Arkansas, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock, this May —, 1910.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas,
 By W. P. SADLER, D. C.

Costs of Suit.

Transcript fees not credited up.

Advance costs pd. by appellant.....	\$11.50
Appellees' brief cost	15.00
Transcript to Supreme Court, United States.....	59.00
Indexing, 69 entries.....	6.90
Marginal notes	2.50
12 filings	1.20
Expense, binding transcript.....	.50
3 certificates with seal.....	1.50
Total.....	\$71.60

(Here follows map marked p. 238.)

Endorsed on cover: File No. 22,210. Arkansas Supreme Court. Term No. 310. Joanna Little, plaintiff in error, vs. J. J. Williams, Mary E. Baker, and W. T. Sugg, as heirs at law of the late E. G. Sugg, deceased, et al. Filed June 2d, 1910. File No. 22,210.





32nd Annual Report of the Board of Directors

For the Year 1914

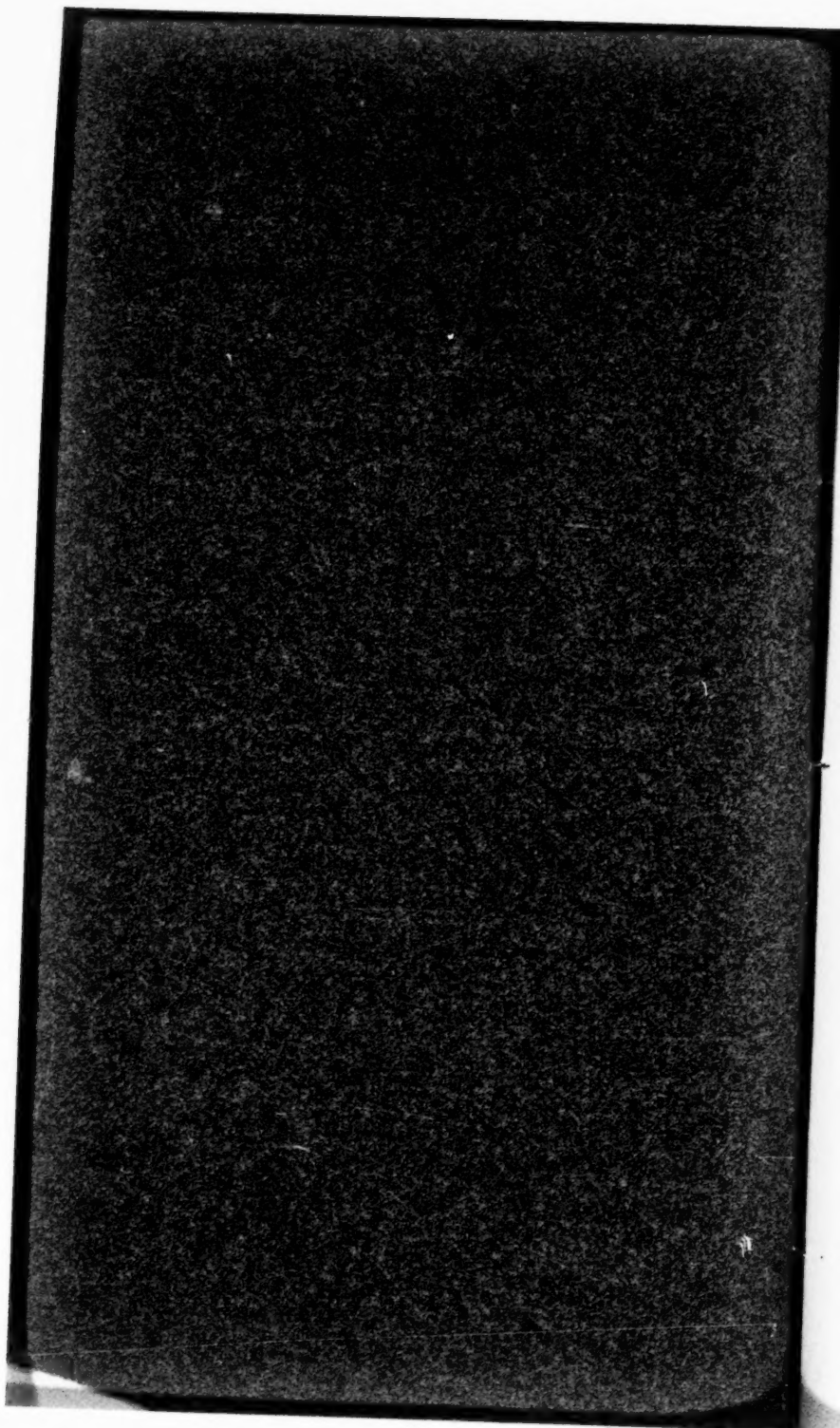
BOARD OF DIRECTORS OF THE BOARD

**J. J. Wilson, President and J. J. Wilson,
Secretary and Treasurer, and J. J. Wilson,
Director of the Board of Directors**

REPORT TO THE BOARD OF DIRECTORS OF THE BOARD

MANAGEMENT OF THE UNITED STATES

WASHINGTON, D. C., 1915



In the Supreme Court of the United States.

OCTOBER TERM, 1913.

JOANNA LITTLE, PLAINTIFF IN ERROR,	}	No. 8.
<i>v.</i>		
J. J. WILLIAMS, MARY E. BAKER, AND W. T.		
Sugg, as heirs at law of the late E. G. Sugg, deceased, et al.		

IN ERROR TO THE SUPREME COURT OF THE STATE OF
ARKANSAS.

SUGGESTION BY THE UNITED STATES.

The Solicitor General on behalf of the United States as *amicus curiae* respectfully represents to the court:

The lands involved in this controversy, and other similar areas in the State of Arkansas, generally known as "sunk lands" and sometimes erroneously designated as "lakes," were omitted from the original public land surveys. In the year 1908 the Secretary of the Interior, after hearing persons interested, decided that certain of these "sunk lands," not having been surveyed or specifically disposed of, remained the property of the United States, and accordingly ordered that they be surveyed and held for disposition under the general land law. See "Arkansas Sunk Lands,"

37 L. D., 345, and same case on review, *ib.*, 462. More recently, similar action was taken by the Secretary in respect of the area known as "Walker Lake," part of which is the subject of dispute in this case. Homestead rights are being asserted to a large part, if not practically all, of these "sunk lands," and suits have been begun by the United States, and others are in immediate prospect, for the purpose of clearing its title against all adverse claims, including such as are asserted by the respective parties to the case at bar. Approximately 40,000 acres will be embraced in these suits.

The record in the present case being silent as to the existence of the Government's claim, this suggestion of it is made not as bearing upon the merits of the controversy now presented, but as a matter of possible interest to the court in guarding its opinion.

Respectfully submitted.

JOHN W. DAVIS,
Solicitor General.

OCTOBER, 1913.



No. 8.

~~NUMBER 310.~~

Office Supreme Court, U. S.
FILED.

OCT 22 1913

JAMES H. MCKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1913

JOANNA LITTLE, PLAINTIFF IN ERROR,

VS.

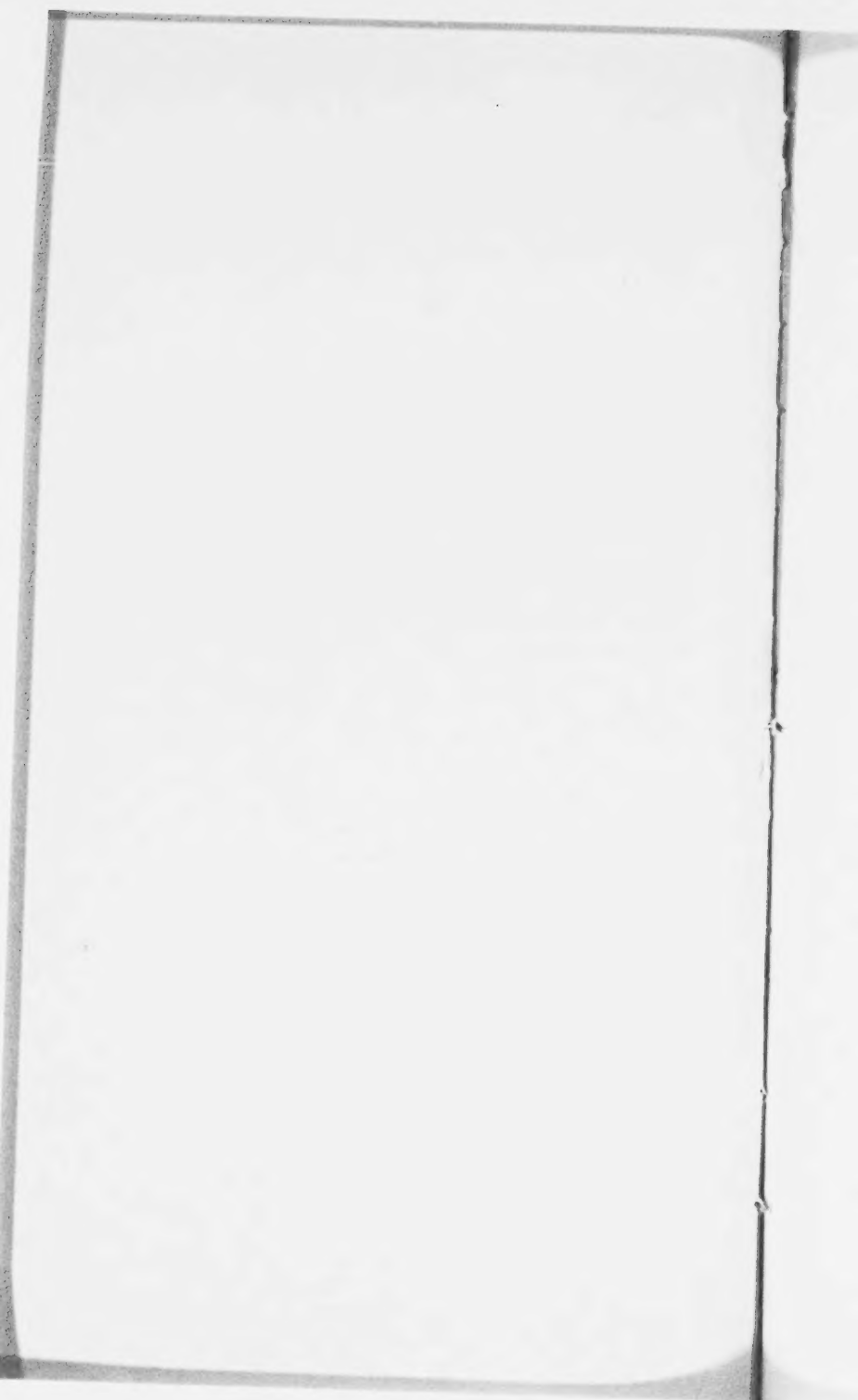
J. J. WILLIAMS, ET ALS., DEFENDANTS IN
ERROR.

WRIT OF ERROR TO SUPREME COURT OF THE STATE OF
ARKANSAS.

BRIEF AND ARGUMENT FOR PLAINTIFF IN
ERROR.

HENRY CRAFT,

For Plaintiff in Error,



INDEX.

	Page
Statement	1
Assignments of Error	7
Brief	10

Cases Cited.

Section 709, Revised Statutes U. S.	14
French Glen Stock Co. vs. Sprenger, 185 U. S. 47, 54	15-40-56-59-63
Revised Statutes, Sec. 709	16
St. Paul & P. R. Co. vs. Schurmeier, 74 U. S. 7 Wall. 272	16-48
Packer vs. Bird, 137 U. S. 661	16
Knight vs. United Land Assn., 142 U. S. 161	16
Shively vs. Bowlby, 152 U. S. 1, 38 L. Ed.	16
Wilcox vs. Jackson, 13 Pet. 498	16
Irving vs. Marshall, 20 How. 558	16
Mitchell vs. Smalle, 140 U. S. 406	16-20-64
Hardin vs. Jordan, 11 Sup. Ct. Rep. 808, S. C. 140 U. S. 371	21-24-48
State of Indiana vs. Milk, 11 Fed. 389 at 394	21
Heath vs. Wallace, 138 U. S. 584	22
McDade vs. Levee Dist., 33 Sou. 628	22
People vs. Warner, 74 N. W. 705	22
Covington vs. Berry, 76 Ark. 464, 88 S. W. 1005	23
Kean vs. Roby, 145 Ind. 221, 42 N. E. 1011	24
Act of March 3, 1857, Chap. 117 (11 Stat. at L. 251, Rev. Stat., Sec. 2484, U. S. Com. Stat. 1901, p. 1588)	24
Stoneroad vs. Stoneroad, 158 U. S. 240, 39 L. Ed. 966, 15 Sup. Ct. Rep. 822	24-48
Kean vs. Calumet Canal Co., 190 U. S. 452, 460	24-30
Dees. Dept. of the Interior, Relating to Pub- lic Lands, Vol. 8, p. 370	31

INDEX (Cont.)

	Page
Niles vs. Cedar Point Club, 175 U. S. 30.....	40
Rhodes vs. Cissel, 82 Ark. 367.....	41
Chapman & Dewey Co. vs. Bigelow, 206 U. S. 41..	43
Horn vs. Smith, 159 U. S. 40 (Law Ed. 40-68)	40-45-52-63
Russell vs. Maxwell Land Grant Co., 158 U. S. 253 (39:971)	48
Morrow vs. Whitney, 95 U. S. 551, 555 (24:456, 457)	48
Chap. 9, Title 32, Revised Stat., p. 438.....	50
Lammers vs. Nissen, 4 Neb. 245	50
Glen vs. Jeffrey, 75 Ia. 20	51
Whitney vs. Detroit Lumber Co., 78 Wis. 240.....	51
Lally vs. Rossman, 82 Wis. 147	51
Bates vs. Ill. Central Rd. Co., 66 U. S. 1 Black 204 (17:158)	51
6 Fed. Stat. Ann. p. 404	61
Smith vs. Hollis, 46 Ark. 17	62
Morgan vs. R. R. Co., 63 Mo. 129	62
Stephenson vs. Stephenson, 71 Mo. 127	62
Carroll vs. U. S., 154 Fed. 425	62
Oyden vs. Buckley, 116 Ia. 353 (89 N. W. 1115)	62
Barney vs. Keokuk, 94 U. S. 324-328	64
Hardin vs. Shedd, 190 U. S. 508.....	64
Whittaker vs. McBride, 197 U. S. 510.....	64
State vs. Portsmouth Sav. Bk., 7 N. E. 379.....	65
Western & Hawaiian Inv. Co. vs. Farmers & T. Nat. Bk., (Ore.) 57 Pac. 912	66
Grant vs. Hemphill, 59 N. W. 263.....	67
Warran vs. Chambers, 25 Ark. 120	68
Rhodes vs. Cissell, 82 Ark. 367	68
Chapman & Dewey L. Co. vs. Board of Directors of St. Francis Levee Dist., 100 Ark. 94	68-70
Little vs. Williams, 88 Ark. 37.....	69

NUMBER 310.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1911.

JOANNA LITTLE, PLAINTIFF IN ERROR,

VS.

J. J. WILLIAMS, ET ALS., DEFENDANTS IN
ERROR.

WRIT OF ERROR TO SUPREME COURT OF THE STATE OF
ARKANSAS.

STATEMENT.

The bill in this cause was filed in the Chancery Court by Joanna Little for the purpose of quieting and establishing her title to certain wild and unimproved lands, *then in her actual possession*, in the northeast corner of Mississippi County, Arkansas, described as follows:

"S $\frac{1}{2}$ of Sec. 25, except 19 acres on the north side, and all of Sec. 36, in township 16, N. R. 12 E.; also the West $\frac{1}{2}$ of Sec. 31, and S. E. $\frac{1}{4}$ of Sec. 31, in Township 16 N. R. 13 E."

She alleges title to said lands through the following sources:

From the United States government to the State of Arkansas, by act of Congress of date September 28th, 1850, donating to the state all "swamp and overflowed lands."

From the State of Arkansas to the St. Francis Levee District by act of Legislature of date March 29th, 1893.

From the St. Francis Levee District to plaintiff in error by deed of date March 11th, 1903 (Tr. 113).

The above described lands constitute a part of what is designated on the map or plat of the government survey of Mississippi County "Walker Lake" (Tr. 132).

Defendants in error are the owners of the fractional sections of land abutting on the meandered line of Walker's Lake and claim the title and ownership of the lands in controversy by reason of their alleged rights as riparian owners. They distinctly and specifically limit their claim as stated. In their answer they say:

"Defendants claim title to the lands sued for in this action by reason of said lands being a portion of the bottom of what was once a shallow, non-navigable lake, which has since gone dry by the recession of the waters therefrom, and by reason of their original lands as aforesaid bordering upon the margin or banks of said lake, and lying contiguous to the lands so uncovered" (Tr. 8).

Plaintiff in error claims that Walker's Lake was really one and a half miles west of defendants' fractional sections when the survey was made, and that the intervening land, which is the land in controversy, was never the bed of a lake. Therefore, the questions presented for determination arising under the respective claims were:

1st.

Had the title and ownership of the lands in controversy remained in the United States government up to the act of Congress of 1850, and if so, did the lands pass to the State of Arkansas under that act, and the patents issued by the government to the state.

2nd.

Or had defendants, as riparian owners, acquired title to the lands before the act of 1850, or have they acquired title since, by operation of law, under the doctrine of recession?

The testimony was taken upon the theory that these two propositions covered the entire controversy between the parties. Plaintiff insisted that the *locus in quo* was never lake bed, but was swamp and overflowed land passing under the grant of 1850, and patents issued thereunder to the State of Arkansas, and then under the act of the State of Arkansas of 1893 from the State to the St. Francis Levee District. Defendants insisted that it was part of the bed of Walker's Lake when the government survey was made, and had become land by reason of the recession of the water of that Lake.

But the Supreme Court of the State of Arkansas held that the land had never passed out of the government of the United States, and that therefore there could be no ground for any controversy between the parties to this cause. On this ground it dismissed the bill.

The facts necessary to be understood in this connection are embraced in the following stipulation, upon which the cause was tried:

"In order to avoid labor and expense in taking testimony, it is agreed by counsel representing defendants that all the surveyed lands in the vicinity and locality of what would be south $\frac{1}{2}$ of Section 25, the whole of Section 36, Township 16, Range 12 East, and northwest $\frac{1}{4}$ and south $\frac{1}{2}$ of Section 31, Township 16, Range 13 East, Mississippi County, Arkansas, if same were surveyed, were, in September, 1850, swamp and overflow lands, and passed to the State of Arkansas under the grant of the United States of date September 28, 1850, and that the townships including Walker Lake, as meandered on the map, were included by the Secretary of the Interior of the United States government in the list of lands prepared by him and forwarded by him to the Governor of Arkansas, showing the lands which passed to the State under the grant of 1850, and that said lands embraced in said list were subsequently covered by patents from the government of the United States.

And it is further agreed that the State of Arkansas never undertook to convey the said lands, embraced within the meandered lines of Walker Lake, except as same might have passed by op-

eration of law to the defendants as riparian owners prior to the land grant made by the State to the St. Francis Levee Board in 1893" (Tr. 15).

The Supreme Court of Arkansas construing this stipulation, undertook to say what was the proper effect to be given to the following language:

"And that the townships including Walker's Lake as meandered on the map, were included by the Secretary of the Interior of the United States government, in the list of lands prepared by him and forwarded by him to the Governor of Arkansas, showing the lands which passed to the State under the grant of 1850, and that said lands embraced in said list were subsequently covered by patents from the government of the United States."

The Court gave to the stipulation the same effect which it would have given to patents of the United States government covering "the townships including Walker's Lake, as meandered on the map", and then proceeded to say what was the effect to be given patents issued by the government for land, and concluded by holding that patents issued by the government "for the whole of the townships including Walker's Lake", did not have the effect to grant the land included in the meandered lines of Walker's Lake, because it was not sectionized. The Court had previously stated, in the opinion, that as matter of fact it was clearly established that the land in question had never been part of a lake bed, and that Walker's Lake was about a mile west there-

of when the survey was made by the government engineers (Tr. 112 & 120).

Plaintiff's title was dependent upon the effect to be given the grants, or patents, of the government. Her claim of ownership was based entirely upon the theory that a patent for a township embraced and conveyed all the land in the township. But the Supreme Court of Arkansas held it only conveyed such land as was sectionized. It was upon this construction of the government grants and patents that the Court predicated its decree denying plaintiff's claim of title. Such decree I submit called in question, for construction, a governmental act, or authority, and gave rise to a federal question concerning which this Court has jurisdiction, and it is upon this ground that the writ of error in this cause was sued out.

ASSIGNMENTS OF ERROR.

1st.

The Court erred in holding that the land in question did not pass to the State of Arkansas under, and by operation of, the Act of Congress approved Sept. 28, 1850 (9 Stat. at L. 519, Ch. 84 U. S. Comp. Stat. 1901, p. 1501), and the patents issued by the United States to the State of Arkansas, covering the whole of the two townships which embraced the land in question.

2nd.

The Court erred in its construction of, and the effect to be given to the Act of Congress of Sept. 28, 1850, and the patents of the United States covering the two townships embracing the land in question, as indicated by the following language, found in its opinion, to-wit:

"In running the meander lines, the surrounding sections and parts of sections were necessarily made fractional; and under the Swamp Land Act of 1850, surveyed land in the townships surrounding the lake were selected by the state. The selections were approved by the Secretary of the Interior, and patents were issued to the State conveying the land by description according to official plats of the survey returned to the general land office of the Surveyor General."

3rd.

The fundamental error of the Court and the one upon which its decree must necessarily rest, is in its construction and adjudication that unsurveyed (in the sense of unsectionized) land did not pass to the State under the grant of 1850, or under the patents issued to the State calling for two whole townships.

4th.

It was error for the Court to construe the patents issued by the Government of the United States to two whole townships, as only covering the sectionized land in said townships, as indicated by the following language contained in the opinion:

"The legal effect of the patents to the State of the fractional sections, and parts of sections surrounding the meandered lines of the lake, according to the official plats of the public survey, was to convey all riparian rights and by virtue thereof to vest *prima facie* title to the bed of the lake, as shown on the plats, from meander shore lines to center. The conveyances executed by the state in turn to its grantees, had the "same effect."

5th.

The Court erred in its construction and interpretation, of the patents issued by the United States to the State of Arkansas conveying the whole of the township, as indicated by the following language in its opinion, to-wit:

"A conveyance of the township according to plat of the surveys does not include lands which do not appear on the plat of the survey * * * .The plat showed it to be water and not land."

6th.

The Court erred in holding that the Government survey of Mississippi County, Arkansas, introduced for the purpose of locating and defining the two townships which embraced Walker's Lake (for which patents had been issued by the Government to the State) was controlling on the proposition as to what was land and what water; especially, after it had found as matter of fact that the surveyors had been mistaken as to the location of the lake.

(Tr. 124).

BRIEF.

Facts showing the presence of a federal question are clearly set out in the original complaint filed in the Chancery Court of Mississippi County, Arkansas, as follows, to-wit:

"Your petitioner, Joanna Little, would respectfully state and show unto your honor that she is the owner and in possession of the following described lands lying in the Chickasawba District of Mississippi County, Arkansas, to-wit:

The South $\frac{1}{2}$ of Section 25, except 19 acres on the North side, and all of Section 36, in Township 16 North, Range 12 East, also the West $\frac{1}{2}$ of Section 31 and the Southeast $\frac{1}{4}$ of Section 31, in Township 16 North Range 13 East.

And that she derived title thereto as follows: From the United States of America to the State of Arkansas by Act of Congress of date Sept. 28th, 1850, donating to the State of Arkansas all swamp and overflowed lands within its borders for the purpose of reclaiming the same; from the State of Arkansas to the St. Francis Levee District by Act of the Legislature of date March 29th, 1893, donating to said St. Francis Levee District all State lands, except the 16th sections, lying within its borders; from the St. Francis Levee Board to this petitioner by Deed of date of March 11th, 1903, which Deed is duly of record in Deed Record Volume 3, page 76 of the Records for the Chickasawba

District of Mississippi County, Arkansas; said Deed being hereto annexed marked "Exhibit A" and made a part of this petition."

These allegations that the plaintiff relies for her title upon the grant and patents of the United States government to the State of Arkansas, are supplemented by the stipulation of counsel for defendants to the effect that the *locus in quo* passed from the government to the State by patents (Tr. 15).

That the Supreme Court of the State of Arkansas based its adverse ruling upon its construction of the grant, and patents, of the United States is most clear from the language of the Court found in its opinion upon the petition to reconsider, to-wit:

"Description of lands, according to terminology employed in the system of governmental surveys and plats of land, is necessarily a reference to the plats of those surveys; for those terms are meaningless unless considered with reference to the surveys and plats. There is nothing known of townships, sections and parts of sections of lands except such as are described in the plats of the government surveys. Therefore, giving the word township, used in the stipulation of facts, the meaning which we must attribute to the parties who employed the term, it has reference to the townships surveyed and platted by the government surveyors, and means the townships according to the surveys and plats. A conveyance of the township "according to plat of the surveys" does not include lands which do not appear on the plat of the surveys.

We do not mean to hold that the unsurveyed land could not have been selected as swamp lands and patented to the State by the use of proper descriptive terms in the patent, but this was not accomplished by reference to townships, sections or parts thereof according to the plat of the surveys when the unsurveyed land did not appear on the plats at all. The plats showed it to be water and not land. We are convinced, also, that even if we discard the technical meaning of the word township, the language of the stipulation is susceptible of no other reasonable construction than that only the surveyed land appearing on the plat of the public survey was meant to be covered by the agreement. It is evident that the parties meant only the surveyed lands appearing on the plat, leaving all questions as to the character of the unsurveyed territory and title thereto open to further proof and adjudication. We find nothing to indicate that appellees' counsel meant to concede that if the *locus in quo* should be found to have been land and not lake bed at the time of the survey in 1847, it was included in the patents from the United States to the State of Arkansas and belonged to appellant. In this respect the stipulation deals only with the surveyed land. It reads that 'all of the surveyed lands in the vicinity and locality * * * were, in September, 1850, swamp and overflowed lands and passed to the State of Arkansas under the grant of the United States of date Sept. 28, 1850, and that the townships including Walker's Lake, as meandered on the map, were included by the Secretary of the Interior of the United States government in the list of lands prepared by him and for-

warded by him to the Governor of Arkansas, showing the lands which passed to the State under the grant of 1850, and that said lands embraced in said list were subsequently covered by patents from the government of the United States."

"Now, as it was only stipulated that the surveyed lands passed to the State as swamp and overflowed lands under the act of Congress, it would be unreasonable, in the absence of a clear expression, to construe the meaning of the stipulation to be that the unsurveyed lands were patented by the United States to the State.

"We therefore think that we were correct in saying that 'the legal effect of the patents to the State of the fractional sections and parts of sections surrounding the meandered lines of the lake, according to the official plats of the public survey, was to convey all riparian rights and by virtue thereof to vest *prima facie* title to the bed of the lake, as shown on the plats, from meandered shore line to center,' and that 'if title to the lands in controversy has not passed out of the United States to the State and its grantees in that way, it has never passed at all.'"

(Tr. 120, 121 c.)

In substance that opinion, and the original opinion, (Tr. 112) hold that a patent to a township, "according to a government survey" conveys only the sectionized portions of the township, and that it appearing from the map of the government survey that the land in controversy was not surveyed into sections, half sections and quarter sections, it did not pass under the grant, or the

patent, notwithstanding the fact that it was embraced within the townships granted and patented.

Nor was it possible for the Court to reach its conclusion, denying the claim of plaintiff, except by the construction which it gave to these government acts. If, according to the agreed facts, all the lands in question were in 1847 and 1850 swamp and overflowed, and passed to the State of Arkansas under the grant of 1850, and then were covered by patents conveying whole townships, and those patents were given the force and effect claimed by plaintiff, unquestionably those governmental acts would have operated to vest title in the State of Arkansas, and its grant in 1893 would have operated to vest title in the St. Francis Levee District, and in turn its deed would have operated to vest title in plaintiff. Therefore, the only infirmity in plaintiff's title is brought about by the construction placed upon the patent of the government conveying by "townships". The holding that such patent operated only to pass title to the sectionized land within the townships, was a decision by the State Court against a title and right specially set up under the "Statutes, patents, deed of conveyance, and authority of the United States of America."

Section 700, Revised Statutes U. S.

Upon the question of whether there arose a federal question upon a record presenting somewhat similar facts to those here relied upon, this Court said:

"However, as the plaintiff contends in the Courts below and in this Court that a proper construction of the survey and patents gave riparian rights covering the land in dispute, and that it was not competent to overcome such rights by evidence affecting the legal import of the plats and patents, we think a federal question is thus presented."

French Glen Stock Co. v. Sprenger, 185 U. S. 47, 54.

Again this court very fully considered this question and I quote somewhat at length from the opinion, as follows:

"This case concerns the title in certain lands below high water mark in the Columbia River in the State of Oregon; the defendant below, now plaintiff in error, claiming under the United States, and the plaintiffs below, now defendants in error, claiming under the State of Oregon; and is, in substance this: James M. Shively, being the owner by title obtained by him from the United States under the Act of Congress of September 27th, 1850, Chap. 76, while Oregon was a territory, of a tract of land in Astoria, bounded north by the Columbia River, made a plat of it, laying it out into blocks and streets, and including the adjoining lands below high water mark; and conveyed four of the blocks, one above and three below that mark, to persons who conveyed to the plaintiffs. The plaintiffs afterwards obtained from the state of Oregon deeds of conveyance of the tide lands in front of these blocks, and built and maintained a wharf upon part of them. The defendant, by counter claim, asserts

a title, under a subsequent conveyance from Shively, to some of the tide lands not included in his former deeds, but included in the deeds from the state.

The counter claim, therefore, depends upon the effect of the grant from the United States to Shively of land bounded by the Columbia River, and of the conveyance from Shively to the defendant, as against the deeds from the state to the plaintiffs. The Supreme Court of Oregon affirming the judgment of a lower court of the state, held the counter claim to be invalid, and thereupon, in accordance with the state practice, gave leave to the plaintiffs to dismiss their complaint, without prejudice. Hill's Code of Oregon, Secs. 246, 293.

The only matter adjudged was upon the counter claim. The judgment against its validity proceeded upon the ground that the grant from the United States upon which it was founded passed no right or title, as against the subsequent deeds from the state, in lands below high water mark. This is a direct adjudication against the validity of a right or privilege claimed under a law of the United States, and presents a Federal question within the appellate jurisdiction of this court. (Rev. Stat. Sec. 709). That jurisdiction has been repeatedly exercised, without objection or doubt, in similar cases of writs of error to the state courts. *St. Paul & P. R. Co. v. Schurmeier*, 74 U. S. 7 Wall. 272; *Packer v. Bird*, 137 U. S. 661; *Knight v. United Land Assn.*, 142 U. S. 161.

Shively v. Bowlby, 152 U. S. 1, 38 L. Ed.

Wilcox v. Jackson, 13 Pet. 498.

Ireing v. Marshall, 20 How. 558.

Mitchell v. Smalle, 140 U. S. 406.

This federal question, simply stated, is what effect is to be given to a government grant or patent which conveys a township according to a governmental survey and plat.

The Supreme Court of Arkansas says it operates only as a conveyance of the sectionized portions of the township. If so, plaintiff cannot maintain her claim to title. But if it operates to convey the land embraced within the surveyed and platted township lines, then plaintiff's claim would attach to a specific part of such land.

Passing now from the consideration of the proposition of whether there is involved a federal question, I come to a consideration of the merits of this case.

The land in question was, by the stipulation of the defendants, fixed and located, as a part of Township 16, Range 12 and Township 16, Range 13 of Mississippi County, Arkansas, and it was further stipulated that all of these Townships were embraced under patents issued by the government to the State of Arkansas, and that title remained in the State until it by grant in 1893 donated same to the St. Francis Levee Board, unless title became vested before such grant in defendants as riparian owners. If the title remained in the State, it passed by the grant, and then by the deed of the Levee Board it was vested in plaintiff (Stipulation, Tr. 15; Deed from Levee Board, Tr. 113).

In the preparation of the case for trial, much evidence was taken upon the proposition as to whether the land in question was ever part of the bed of Walker's

Lake (Tr. 16-145). The Supreme Court of Arkansas found that plaintiff had conclusively established that it was never lake bed, and that a mistake had been made by the surveyors as to the location of Walker's Lake, and that it was clearly shown that the Lake was more than a mile west of the land in question.

Assuming this finding of fact to be conclusive upon this question, it follows that defendants cannot claim title as riparian owners because of rescission or reliction. So that only two propositions are left in this case for consideration, 1st. Did title pass from the State to the United States under the Swamp and Overflowed Land grant of 1850? 2nd. Did title pass to the defendants under the patents issued to them for fractional sections bordering on the meandered lake, by reason of their riparian rights?

The first proposition, I submit, contains not enough element of doubt to justify discussion, except for the novel reason assigned by the Supreme Court of Arkansas as the basis for its holding. It said the title did not pass out of the United States because the land was "unsurveyed;" that the proper construction to be put upon grants, and patents of the government is that they pass only the surveyed land contained within the bounds of the area mentioned in the instrument; and that the official map of the government survey is conclusive upon the proposition of what was surveyed land and what was water. It then referred to the fact that the stipulation was made upon the theory that it had reference only to

the surveyed land within the two townships, according to the plat of the government survey.

The Supreme Court of Arkansas was in error in two respects. The stipulation does not confine its operation to surveyed land, in the sense of sectionized land within the townships specified, but clearly states that "the townships including Walker's Lake, as meandered on the map, *were included* by the Secretary of the Interior of the United States government in the list of lands prepared by him and forwarded by him to the governor of Arkansas, *showing the lands which passed to the State under the grant of 1850*, and that said lands *embraced in said list* were subsequently covered by patents from the government of the United States" (Tr. 15).

It would seem that these provisions of the stipulation made it clear that the grant, and the patents, covered the two townships, and that the land in question was within the township lines.

Under the Swamp Land Act of 1850, where the township was selected and patented to the State, it was not of the slightest importance to the State whether the sub-divisional survey of the township was correctly made or not.

The State being entitled to *all* the swamp land, and not so many acres of swamp land, the leaving of a portion on one side of a line, which, with lines differently run, would have been thrown on the other, must be entirely without consequence, unless it could be shown that on one side or the other there was something that would

have to class as high land, and which, for that reason, could not pass to the State under the Swamp Land Act.

As patents issued for these townships to the State, there is no way to say that anything in them did not pass. Even if these patents included high land—land entirely above overflow—that was clearly not swamp land, still the title would be in the State until the United States by some proper action, in a proper court, would have the mistake corrected.

Much more so must swamp land pass if within the township, although meandered out by the surveyors and not laid off in sections. Even if these lands had been surveyed after the Swamp Land Act of 1850, still no fraud could have been perpetrated on the government by an erroneous line, where the land was swamp on all sides, no matter where the line was run.

This was recognized by this court in *Mitchell v. Smale*, where Mr. Justice Bradley said, that while formerly the government might have limited its grants abutting on non-navigable lakes to the water's edge, and have reserved the right to survey and grant out the lake bed to other parties, that "since the grant to the respective States of all the swamp and overflowed lands therein, *this cannot be done.*" *Mitchell v. Smale*, 140 U. S. 406.

This language of the court is conclusive upon two questions:

First. That since the Act of September 28, 1850, the government has been without rights in such lake bot-

toms, for the plain reason that they are swamp and overflowed lands.

Second. That this rule applies to lake bottoms that were never surveyed in sections, but were meandered out.

There is no way to make less out of the language of the court.

The same result was reached by the same judge in another case, and apparently without reference to the Act of September 28, 1850, in the following language:

"Where a patent is issued for land bounded by a lake or stream, the title to the land under the water passes from the government, and subsequent action of the land department in surveying and granting the latter land being without authority, cannot be *res adjudicata* as against one claiming under the first patent, though he appeared before the department and resisted its action."

(Syllabus) *Hardin v. Jordan*, 11 Sup. Ct. Rep. 808, S. C. 140 U. S. 371.

Long prior to these decisions by the Federal Court of last resort, Judge Gresham had said in *State of Indiana v. Milk*, 11 Fed. 380, at 394, in applying the Act of 1850 to a lake bottom not laid off in sections:

"But there is no doubt as to the character of the bed of Beaver Lake; it was overflowed land, and as such the title to it vested in the State. This lake was indicated upon the government surveys and maps, and nothing remained to show that its bed was overflowed land within the meaning of the Act."

Subsequent to this was Mr. Justice Lamar's decision in *Heath v. Wallace*, 138 U. S. 584, to the effect that overflowed land in the sense of the Act of 1850, meant lands that would remain covered by water unless reclaimed.

From the syllabi in *McDade v. Levee District*, 33 Son. 628, two sections are very pertinent as follows:

"3. The sections affected by this so-called lake, having been selected and approved in their entirety, passed to the State in their entirety—that is, including their water covered part; and this notwithstanding that the area of this water covered part was not included in the acreage specified for the contents of the sections. As between the State and the general government in the selection and approval of swamp and overflowed land under the grants of 1849 and 1850, acreage cut no figure; the whole of the swamp and overflowed lands having been granted regardless of acreage.

"4. Permanently overflowed swamps, or so-called shallow lakes, destined to become dry as the direct and necessary effect of the building of levees in aid of the construction of which the swamp land grant of 1849 and 1850 were made, passed as land under those grants. The acts making the grants contemplated that these areas would be reclaimed, and therefore, within the purview of the acts, they were land."

In *People v. Warner*, 74 N. W. 705, it was said:

"Unsurveyed swamp lands should not be treated as excluded in the grant thereof, to the several

States by the United States, because not in the list filed by the Interior Department embracing such lands."

In this way we see that both State and Federal Courts hold that swamp land passed to the States under the Swamp Land Grant, though not laid off in sections.

An identification of swamp land was all that was needed, and where surveys and plats show that a given area was swamp land or a shallow lake that could be reclaimed, it has a sufficient identification, whether crossed by section lines or not.

Considerations similar to the foregoing were evidently in the mind of Judge Riddick, in *Corrington v. Berry*, 76 Ark. 464, 88 S. W. 1005, when he held the description immaterial in a patent from the Government to the State, upon the ground that the State's title to swamp land did not depend upon patents alone, but on the Swamp Land Grant of 1850.

More recently this court again considered this very question, and held that all the land which would have been embraced in the full sections, had the lines been extended, passed under a grant of the "whole of fractional sections," although the main part of the land was not marked by section lines, the lines as shown on the map indicating only fractional sections bordering on a meandered line.

"It is said that the land under water was not embraced in the survey of 1834. It would seem from the plat and the field notes that the sections

and dividing lines were clearly marked off and posts set. The case is similar to *Kean v. Roby*, 145 Ind. 221, 42 N. E. 1011, where the survey was pronounced sufficient. *No difficulty was felt on the ground that the survey did not cover the submerged land in Hardin v. Jordan*, 140 U. S. 371, 35 L. Ed. 428, 11 Sup. Ct. Rep. 808, 838. But furthermore the land was selected as 'swamp and overflowed lands' by the state. It not appearing otherwise, the selection must be presumed to have included the land overflowed, and if so, it was confirmed to the state by the act of March 3, 1857, Chap. 117 (11 Stat. at L. 251, Rev. Stat. Sec. 2484 U. S. Comp. Stat. 1901, p. 1588). The confirmation encounters none of the difficulties of cases like *Stoneroad v. Stoneroad*, 158 U. S. 240, 39 L. Ed. 966, 15 Sup. Ct. Rep. 822. The land surrounding the water, at least, was surveyed, so that the identification of the submerged portion was absolute. We are of opinion that the state of Indiana got a title to the whole land in dispute."

Kean v. Calumet Canal Co., 190 U. S. 452, 460.

I submit the error which has been made lies in the fact that the Supreme Court of Arkansas has failed to give the proper interpretation, and significance, to the *stipulation of counsel*. I believe I can collate from the opinion the conclusions of fact upon which all the findings of law were based, and can then show that these statements of fact are at variance with the stipulation of counsel. For convenience, and emphasis, I will put them in parallel columns. (The italicising is mine.)

OPINION.

"Under the Swamp Land Act of 1850 all the *surveyed* lands in the townships *surrounding* the lake were selected by the State. The selections were approved by the Secretary of the Interior and patents were issued to the State conveying the land by description *according to the official plats* of the survey returned to the General Land Office of the Surveyor General" (Tr. 114-115).

The legal effect of the patents to the State of the *fractional sections* * * * was to convey all riparian rights, and by virtue thereof to vest *prima facie* title to the bed of the lake" (Tr. 116).

If title to the lands in controversy has not passed out of the United States to the State and its grantees in that way, *it has never passed at all*" (Tr. 116).

"These lands *have never been selected or patented* at all, unless the patents to the adjoining fractional sections embrace them" (Tr. 116).

STIPULATION.

"In order to avoid labor and expense in taking testimony it is agreed by counsel representing the defendants that * * * *the townships* including Walker's Lake, *as meandered* on the map, were *included* by the Secretary of the Interior of the United States Government in the list of lands prepared by him and forwarded by him to the Governor of the State of Arkansas, *showing the lands which passed to the State* under the grant of 1850, and said lands embraced in *said list were subsequently covered by patents* from the Government of the United States." (Tr. 15-16).

It will be seen that I have omitted from the stipulation as above set out the first part, which is as follows:

"All the surveyed lands in the vicinity and locality of what would be south $\frac{1}{2}$ of Section 25, the whole of Section 36, Township 16, Range 12 east, and northwest $\frac{1}{4}$ and south $\frac{1}{2}$ of Section 31, Township 16, Range 13 east, Mississippi County, Arkansas, if same were surveyed, were in September, 1850, swamp and overflowed lands and passed to the State of Arkansas under the grant of the United States of date September 28, 1850."

This part of the stipulation deals exclusively with the *surveyed lands*, in the vicinity of the lands in controversy. Those were the lands which defendants claimed to own, and the only object to be accomplished by the first part of the stipulation was to show that all the lands, surrounding the lands in controversy, were in 1850 swamp and overflowed lands. At the time the stipulation was signed, there was no controversy between the parties over any proposition except the question of whether the land involved was to be regarded as lake bed or as swamp and overflowed land. The pleadings clearly show this. When this fact is kept in mind, the meaning and purpose of the stipulation becomes very clear.

But it was necessary for plaintiff to go further than the provision of the first part of the stipulation. Plaintiff was not interested in the surveyed lands, and therefore the first part of the stipulation interested her only

indirectly. Either *by proof or by stipulation*, it was very plain that plaintiff must make out her chain of title from the government. It was equally clear that the first part of the stipulation only dealt with the surveyed lands, and did not affect the so-called lake bed. In other words, it was necessary for plaintiff to have a record showing that everything in the townships including Walker's Lake, *as meandered*, passed out of the Government into the State. I submit the language of the stipulation, printed in parallel column, is as apt, and comprehensive, for the accomplishment of the desired purpose as it could possibly have been made.

It brings out clearly all the principal features and requirements of the Act of Congress regarding swamp and overflowed lands. It shows that the Secretary of the Interior prepared a list of selected lands, and forwarded same to the Governor of Arkansas, *as the list showing the lands which passed to the State under the grant of 1850*. It shows that such list was acceptable to the Governor of Arkansas, because the lands embraced in the list "were subsequently covered by patents from the Government." The record shows that Walker's Lake, *as meandered*, was in two townships. The township line ran through the middle of the Lake. Therefore, the significance of the language "that the townships including Walker's Lake *were included*" in the list. Such language can have but one meaning. It must mean that the two townships in which Walker's Lake, *as meandered*, was located, were *as townships*, included or embraced in the list of lands prepared, selected and certified by the

Secretary of the Interior, as being lands which passed to the State of Arkansas. It is impossible to read the stipulation, and believe for a moment that counsel signing it for defendants had any other idea. And in this connection it must be remembered that there is nothing in this record to show that counsel signing the stipulation were making any controversy or intended making any controversy about the question of title passing from the Government to the State. Their theory was that if it was *lake bed* it would not pass under the stipulation, and if it was *not lake bed* that they could not in any event maintain their claim. And so it was that counsel, then representing the defendants, signed the stipulation, and we are entitled to the full benefit of it, under a reasonable and proper construction, according to the usual and customary meaning of the language used.

It seems to me that the court has wholly failed to give effect to the part of the stipulation which refers to the *land in question*, and has been led astray by that part of it which refers to the *surveyed lands*. If this is not true, how could the opinion use the following language:

"In running the meander lines the surrounding sections, and parts of sections were necessarily made fractional, and under the swamp land act of 1850, *all of the surveyed land* in the townships surrounding the lake were selected by the State. The selections were approved by the Secretary of the Interior and patents were issued to the State conveying the land *by description according to the official plats of the survey* returned to the General Land Office of the Surveyor General" (Opinion Tr. 114).

I submit there is nothing in the stipulation, or the record, to justify the conclusion that it was the *surveyed land* only which was selected or for which patents were issued. On the other hand, the stipulation plainly says that *the whole of the two townships* was selected, listed and patented. Nor is there anything in the record to show that this was done according to any certain plats or survey. There is only one thing made certain by the record, and that is that the two townships were embraced in the list which was certified by the Secretary of the Interior, and that all the land in that list was patented to the State. It necessarily follows that the land in controversy was covered by patents, because it was a part of the townships, and the court had already determined that *it was land*, at the time, as distinguished from lake bed.

The mere fact that the land was unsurveyed, in the sense that no section lines extended through it on the map, does not present any obstacle. Townships are recognized and well defined divisions of territory according to governmental surveys, and when it is agreed between the parties by stipulation, filed in the record, that the whole of the two townships which embrace or include the land in controversy, were selected, listed, certified and patented, this certainly must be considered as an admission that the lands in controversy were duly patented to the State. The agreement clearly identifies the lands, because it not only says all of the two townships were patented, but for further identification says "including Walker's Lake as meandered on the map."

The whole record in the cause concedes that the land in controversy is embraced in Walker's Lake *as meandered on the map*. Even the strictest rules of construction require nothing further than that the property be capable of being identified.

This question arose in case of *Kran v. Cabinet Canal Co.*, 190 U. S. 452, and on page 461 the court says:

"The land surrounding the water, at least, was surveyed so that the identification of the submerged portion was absolute."

The Land Department of the Government, in its opinion upon the "Petition of State of Florida," says:

"In the decision of the department above referred to, the Secretary, observing the grant of September 28, 1850, is not a grant of lands by legal subdivision, but a grant of "the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which remain unsold at the passage of the act," says:

"The failure to make a subdivisinal survey of the township can in no wise affect the right of the State under the grant to all of the swamp and overflowed lands, as contemplated by the grant, and the only purpose to be subserved by a subdivision of the township is to enable the Secretary to determine whether by such subdivisinal survey there might be one or more legal subdivisions, the greater part of which is dry and fit for cultivation. If, however, the whole of a township, or any particular or specified part of a township, or the whole

of a tract of country bounded by specified, surveyed or natural boundaries, is of the character embraced by the grant,' a subdivisinal survey of the township would not be necessary to enable the Secretary to make out a list and plat the swamp and overflowed lands in accordance with the provisions of the act, because if 'the whole of the township' or the whole of a tract of country bounded by specified, surveyed or natural boundaries, is swamp and overflowed, it necessarily follows that a subdivision of the land would show that the greater part of each smallest legal subdivision is swamp and overflowed, and therefore of the character of the lands described in the grant.

'Hence, I can see no reason why selections cannot be made of large bodies of unsurveyed swamp land by estimated areas if the entire body is unquestionably swamp, and if it is absolutely certain that a subdivisinal survey would show the greatest part of every smallest legal subdivision to be swamp and overflowed within the meaning of the act.'" (Decs. Dept. of the Interior, relating to Public Lands, Vol. 8, p. 370).

With the official Government map of Mississippi County in evidence, there cannot be a doubt as to the location of the two townships which embrace or include Walker's Lake, and it is *these* (not the surveyed portion of these) which the stipulation says were selected, listed and patented (Tr. 133).

If the meaning which the Supreme Court of Arkansas has given to the stipulation is correct, and it is only the surveyed fractional sections which are to be

treated as patented to the State, what was the purpose of that portion of the stipulation which I have printed herein in parallel columns? By the preceding portion of the stipulation it had been clearly stated, and agreed, *that all the surveyed lands* passed to the State under the grant of 1850. The object and purpose of the balance of the stipulation, evidently, was to cover the balance or unsurveyed portion of the land, and, for the very reason that the portion in controversy *was unsurveyed*, it was necessary by the later provision in the stipulation, to take in the whole of the townships, the township being the only well defined description available. So it will be seen that necessarily the parties to the stipulation must have understood that something was intended to be accomplished by that portion of the agreement referring to the "townships including Walker's Lake as meandered on the map." There can be no doubt about what the parties understood that to mean, for nothing was left open to speculation. If it be granted that the townships, including Walker's Lake, as meandered on the map of the government survey of Mississippi County, can be located, it follows inevitably that it was *those townships*, and anything embraced therein, which were listed, and patented, by the Government to the State. *And the stipulation is the only evidence in the record on this proposition.* It is not to be believed that counsel representing plaintiff would have gone to trial in this case without anything whatever to trace her title to the Government. The fact that this stipulation was solely relied upon in this respect is itself strong and convincing evidence that it

was the understanding of counsel, then representing the respective parties, that it covered the question of title.

Again, in the opinion, is found the following statement:

"The legal effect of the patents to the State of *the fractional sections and parts of sections* surrounding the meander lines of the lake, according to the official plats of the public survey, was to convey *all riparian rights*, and *by virtue thereof* to vest *prima facie* title to the bed of the lake, as shown on the plats, from meander shore lines to center."

I submit there is nothing in the record to warrant the conclusion of fact stated above. There is nothing to show that the Government of the United States ever issued patents to the State of Arkansas for the "fractional sections and parts of sections surrounding the meandered lines of the lake." There is nothing in the record on the subject of grants or patents from the Government, except what is contained in the stipulation of counsel, and that is plainly to the effect that the patents issued by the Government covered *the whole* of the two townships. The township was the legal sub-division by which the property passed, according to the stipulation.

Again we find in the opinion:

"If title to the lands in controversy has not passed out of the United States to the State and its grantees *in that way*, *it has never passed at all*. Though the Swamp Land Act has been held to be

a grant *in praesenti*, the legal title did not pass until the lands were duly selected as such and patents were delivered."

In face of the stipulation to the effect that the lands were selected, listed and patented, I do not see the pertinency of the language of the opinion. And if the stipulation of counsel was given effect by the court, it would seem impossible for the court to say:

"These lands have never been selected or patented at all unless the patents to the adjoining fractional sections embraced them" (Tr. 116).

In the first place we have seen that there is no evidence that any patents were ever issued covering the fractional sections, and in the second place the stipulation seems plain to the effect that patents did issue covering the whole townships in which the lands in question were located.

I submit that a proper construction of the stipulation must result in the conclusion that all the lands in the two townships passed regularly from the Government to the State. This included the lands in controversy, as well as the fractional sections claimed by defendants. All parties stand on the same footing, and trace title under the same patents.

In the case at bar it has been definitely determined, from the evidence, that the *locus in quo* was never a lake, or lake bed, and yet in the very teeth of the holding of the Supreme Court of the United States, it was held that plaintiff is bound by the running of the mean-

dered line; and notwithstanding Mr. Justice Brewer's declaration that there can be no riparian rights where the land did not, as a matter of fact, border on a body of water, the Supreme Court even after its adjudication that the land in question never did border on a body of water, worked out all its conclusions under the law of riparian rights.

By reason of the initial error in failing to properly construe the stipulation of counsel, the Court became involved in the mistake of adjudging *as a fact* that patents had issued to the State from the Government of the United States, *only to the surveyed fractional sections* surrounding the meandered lake, whereas we have seen, according to the stipulation, the patents covered the whole of the two townships, thus embracing the land in controversy as well as the fractional sections. And we have also seen that there is not a line of evidence in the record that any patents ever issued covering the fractional sections.

I submit that a careful reading of the opinion will show that every other conclusion which the Court says differentiates this case from those upon which I rely, depends upon, and follows from, this erroneous conclusion. Let us analyze the opinion on this proposition:

(1)

On page 114 of Transcript we find:

"All the *surveyed lands* in the townships surrounding the lake were selected by the State. The

39

selections were approved by the Secretary of the Interior and patents were issued to the State."

This, the first premise, was certainly erroneous.

(2)

On page 115 the next proposition is advanced, and is argued upon the basis of the first finding to the effect that the title to the unsurveyed land is still in the Government.

"Neither the Land Department of the United States nor the State of Arkansas has ever questioned the correctness of the survey, but, on the contrary, have up to the present time, and do now, treat them as correct, if we may in that light view a failure to take any steps looking to the correction. Can an individual question the correctness of the surveys when neither the General Government nor the State Government has ever done so? Can an individual acquire and assert rights in these *unsurveyed* lands which the Government has never asserted against *the riparian rights* of the adjoining owners?"

This language has no meaning or force except as based upon the idea that the ownership to the unsurveyed land *was in the Government, or in the State*. If we give effect to the *stipulation*, we see that all interest in the unsurveyed land, as well as the surveyed land, passed out of the Government to the State, and all interest of the State in the unsurveyed lands passed to plaintiff's vendor, "except as same might have passed by

operation of law to the defendants as riparian owners." It is therefore perfectly clear that the Government of the United States, nor the State of Arkansas, had any possible interest in these unsurveyed lands, and accordingly no purpose or reason for raising any question regarding the correctness of the survey.

In this connection, let me repeat that under the provision of the stipulation just above quoted, these defendants could not possibly have ever had any interest in the unsurveyed lands, because it was impossible for them to have ever had any riparian rights. The Court has adjudged that their lands do not, and never did, abutt or border on any body of water. The *stipulation* says that if defendants had no riparian rights they have no claim whatever. And the Supreme Court of Arkansas has found and adjudged facts which this Court has repeatedly said preclude the possibility of the existence of riparian rights.

(3)

On pages 115 & 116 the opinion discussess the question of the absoluteness and finality of the Government survey, and the want of right in the individual to question it, and want of power in the courts to correct it. I do not quote the opinion on this subject because I cannot see the pertinency or applicability of this discussion to any phase of the real case, and I am forced to believe that it was injected into the opinion as the result of the false idea that plaintiff was endeavoring to make some question which only the Government had the right to

make. Such an idea could only have arisen from the erroneous conclusion that title to the lands in controversy was in the Government or in the State, instead of in plaintiff. Plaintiff certainly is not asking for any correction or alteration of the Government survey. Plaintiff uses the Government survey as a means of identifying her land, granted and patented by the Government to her predecessors in ownership. Why should she seek to change or alter the survey? She does not criticise the survey except as defendants insist it shows a lake to have been where plaintiff says her land now is and always was. And in this criticism this court has sustained plaintiff.

This Court has said in four well considered cases of very recent date (every one of them later than any authority cited upon this proposition in the opinion), that a Government meander line *adjudicates and fixes nothing as to the nature or character of what is beyond it* (*Supra*).

Plaintiff filed her bill in this case alleging that certain unsurveyed land, just west of the eastern *meander* line of Walker's Lake, was hers. She alleged her chain of title, and asserted that it was land and always had been, as distinguished from lake. Defendants reply and say that the *locus in quo* was lake bed, that it adjoined their lands when it was lake bed, and that therefore as riparian owners they are entitled to it. But they also signed a stipulation (upon which plaintiff relied as meaning something) to the effect that if they were not entitled to the land in question *by reason of riparian*

rights, they had no claim upon it. (Last of stipulation.)

How, then, arises the question of the right to correct a survey? The pleadings present the one question of whether the *locus in quo* is to be treated as land or water. Its identity is admitted. If it be the law that there can be no such thing as riparian rights where the land of the claimant does not actually (as matter of fact) border on a lake, navigable or non-navigable, then the agreement and stipulation of counsel eliminated every other question from this case, and in effect said, if the court shall hold that the *locus in quo* is land and never was lake bed, plaintiff may have her decree. The Supreme Court of Arkansas has so adjudged, and yet refused to carry into effect the stipulation.

Carry into effect the provision of the stipulation that the land in question passed to plaintiff's vendor, the levee district, unless it vested in defendants as the result of the operation of the law regarding riparian rights, and you make impossible the discussion which appears in the opinion regarding the effect of surveys, for you thereby fix the fact that the title has passed from the Government and the State, and is vested either in plaintiff or defendants, and neither are seeking to correct the Government survey, each is willing to take the land as he found it, without additional identification or change of description.

If the question of defendants' rights as riparian owners was the only question involved, and if the title to the lands in question had passed out of the Government, and out of the State, as the stipulation provides,

how can it be said (as the opinion does say) that the cases of *Horn v. Smith*, 159 U. S. 40; *Niles v. Cedar Point Club*, 175 U. S. 30, and *French-Glenn Live Stock Co. v. Springer*, 185 U. S. 47, have no application to the case at bar? That was the only question which was involved in each of those cases. In each case the Court was called upon to settle a question of ownership between the two rival claimants. In each case there was involved a government survey and plat, and in each case the court held that the survey and plat were not controlling and decided the case upon the weight of the evidence. In the case at bar the defendants staked their whole case upon the one proposition of fact, as to whether their lands abutted a lake so that the doctrine of riparian ownership might apply. For all other purposes they stipulated that title was vested in the plaintiff. And under the provisions of the stipulation the title to the lands in question was necessarily vested in plaintiff, with the one proviso mentioned. When the court adjudged the *locus in quo* to have always been land and not lake bed, it decided the only question that was, or could have been, before it, all that it had any right to pass upon. Its function, as to the other matters, was confined to giving proper legal effect to the stipulation.

In the first part of the opinion the Court seemed to fully realize that there can be no riparian rights in defendants unless it be found that their lands bordered upon a lake and not upon land.

It was said:

"The first question presented is one of fact, whether at the time of the Government survey in 1847 the land in controversy was a portion of the bed of Walker's Lake or whether it was swamp land; for if the former state of fact is found to have existed then the title of the owners of the adjoining lands extended to the center of the lake by virtue of their riparian rights as such owners, and since the recession or drying up of the waters has left the land exposed, it belongs to them (See *Rhodes v. Cissel*, 82 Ark. 367).

(Tr. 113.)

Why is not the converse of this proposition true? If it is a fact that in 1847 the land in controversy *was not* a portion of Walker's Lake, it would seem that necessarily, to be consistent, it must follow that defendants had no claim to the land. But it may be replied that it was not a question of defendants' title or rights in the land; that plaintiff must succeed upon the strength of her own title. I agree to this proposition, and reply, first, that outside of this proposition of riparian rights defendants have stipulated that the title is in plaintiff; second, outside the question of riparian rights, the title is shown by the facts agreed to in the stipulation to have been in plaintiff. It is agreed that title passed out of the Government to the State, and out of the State to the Levee District, and the deed from the Levee District to plaintiff is a part of the record (Tr. 15-16).

Therefore, in conclusion of what I have to say upon the proposition of the effect of the survey and plat, and

the question of the right of an individual to question the correctness of same. I repeat that no such questions are involved. We are dealing with the simple question of which one of two claimants is the owner of a piece of land, well identified and located, and the controversy is submitted to the court to be determined upon a stipulation covering all the facts about title, and identity of the land, and its location, and upon full proof regarding the only other question, that of whether the land was ever lake bed. Plaintiff abides by the survey, and insists that under the facts of this case the meandered line became a line of boundary, as between the State and its vendees.

(4)

The next erroneous conclusion is stated in the opinion at page 116 as follows:

"The legal effect of the patents to the State of fractional sections and parts of sections surrounding the meandered lines of the lake, according to the official plats of the public survey, was to convey all riparian rights, and by virtue thereof to vest prima facie title to the bed of the lake, as shown on the plats, from meandered shore line to center. The conveyances executed by the State in turn to its grantees had the same effect."

As I have already shown, the Court will search this record in vain for anything to sustain the first statement in the above quotation which I have underscored. No such patents were ever issued to the State according to

the official plats, or otherwise. The patents issued were to two townships.

The part of the opinion just quoted is wholly inconsistent with an opinion of the Supreme Court of Arkansas in a case wherein the facts were identical with the statement of facts contained in the quotation. That case was brought to this Court, and it declined to take jurisdiction because it thought the case was correctly decided by the State Supreme Court, and according to that view, presented no Federal question.

Chapman & Dracey Co. v. Bigelow, 206 U. S. 41.

Riparian Rights.

Passing for the present all other questions, let me take up the question of whether the vendees from the State of the fractional sections can be considered as having acquired any riparian rights over the land in question.

The actual situation has, by the Supreme Court of Arkansas, been determined as of the date of the survey in 1847. It has been found *as a fact* that at that time there lay between the meander line and the lake and in front of the fractional sections of defendants, a *large body of land amounting to 1,000 or 1,200 acres, several times greater than the aggregate amount of land contained in the fractional sections.*

The established fact is that this large body of land, and the fractional sections bordering upon it, all belonged to the State, having been acquired under patents from

the Government covering the two townships in which they lay.

In this situation the State conveys, and while the record does not show it, let us assume that the conveyance being by sections, would thereby indicate that it was according to the Government survey, and that such survey when examined would indicate that the fractional sections abutted upon the meandered line of a lake. Would these facts, *in the face of the finding that the fractional sections did not abut on, but were a mile away from any lake*, vest defendants with riparian rights in the land upon which they actually abutted, and which lay between their lands and the lake? The question, I believe, is stated as broadly as defendants could wish.

The proposition must be considered under two heads:

(1)

Is it the established rule of law, *without exceptions*, that a meander line is not a line of boundary, and that one holding land under a patent, or grant, which according to an official plat, is bounded by the meandered line of a body of water, takes title to all land lying between the meander line and the water, *wherever* such body of water may be found?

I grant that the rule has been generally established that a meander line is not a boundary, and that the title and rights of a grantee of fractional sections abutting the meander line, will be so extended as to include *any small strip of land*, or any body of land inconsiderable in

comparison with the original grant, which may lie between the meander line and the body of water.

But where the established facts plainly show that a mistake was made in the survey, such as the assumption by the surveyor that *another body of water* was the body of water which he meandered, and it appears that the unsurveyed land lying between the meandered line and the body of water intended to be meandered, is many times greater in extent than the fractional sections abutting the meandered line, then and in such event, and under such circumstances, an exception to the general rule is established, and the meander line will be treated as a boundary line.

Horn v. Smith, 159 U. S. 40 (Law. Ed. 40-62).

In as much as I regard the above case exactly in point in its facts, and a direct authority for the proposition which I submit should control, I will for convenience quote it in full:

Mr. Justice Brewer delivered the opinion of the Court:

"But a single question needs consideration. The title of the plaintiff to the property described in his complaint is not challenged, but the contention of the defendants is that the land which confessedly they occupy is not a part of the land so described. In other words, the only question involved is one of description and boundary.

"Plaintiff's title rests upon a patent from the United States, dated March 20, 1885, conveying lot numbered seven or section twenty-three, and

the lots numbered one and two of section twenty-six, in township twenty-nine south, of range thirty-eight east of Tallahassee meridian in Florida, containing one hundred and seventy acres and forty-two-hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General. The official plat of township 29 was in evidence, which showed that sections 23 and 26 were fractional sections bordering on the Indian River. On this plat a meander line runs through the sections from north to south, the Indian River being on the west thereof. The east line of the sections is, so far as these lots are concerned, the ordinary straight line of Government surveys. In the south half of the southeast quarter of section 23 is lot 7. The area of that lot is given as 73.05 acres. The northeast quarter of section 25 is divided into lots 1 and 2. The area of lot 1 is 54.90 acres and of lot 2, 42.53 acres. The boundary lines of these three lots are all straight with the exception of the meander line on the west. The length of the section line between lot 7 and lot 1, extending from the east section line to the meander line on the west, is stated to be 30.55 chains. Along the course of this meander line, as shown on the plat, runs, according to the testimony, a bayou or savannah, opening into Indian River, and west of this bayou and between it and the main waters of the river, is a body of land extending in width a distance of a mile or a mile and a quarter, and amounting to some 600 acres. This is a body of low land, in some places, however, from four to six feet above the level of the river, and covered with a growth of

live oak trees, many of them three and four feet in diameter. It was not land formed by accretion since the survey.

"The contention of the plaintiff is that, in as much as this body of land is not shown upon the official map, and although the boundaries and areas of the three lots are given, the latter aggregating only 170 acres, the patent for the lots conveys all of the land to the main body of the river. In other words, a patent for 170 acres conveys over 700. The basis for this contention is the familiar rule that a meander line is not a line of boundary, and that a patent for a tract of land bordering on a river conveys the land, not simply to the meander line, but to the water line, and hence, as claimed in this case, carries it to the water line of the main body of the river. The testimony is apparently not all in the record, nor are all the instructions, but this presents the ruling of the court: 'It is the rule that the meander line is not the boundary line. They are run, not as boundaries of the tract, but for the purpose of finding the sinuosities of the bank of the stream. Fractional divisions made so by the water are designed and sold by the numbers attached to and reference is always had to the notes and maps of the survey. The water in the notes is the boundary and when there exists a difference between the meander line as run and the actual margin of the stream or lake, the water is the true boundary; but the rule has its limitations, as, for instance, a case in Polk County, with which I am familiar, where there are fifteen miles intervening between the meander line and the margin of a lake. This breaks the rule, and I charge you

that when, as in this case, there is from three-fourths of a mile to a mile and a quarter between the meander line and the actual margin of the river, and when for half a mile in width this land has upon it oak trees, some of which are from three to four feet in diameter, especially where the waters of the river make up, forming a bayou which conforms substantially to the meander line of the Government survey, this is not within the rule.'

"Whatever criticisms may be placed upon this instruction, we think that as applied to the facts of this case, the ruling of the court was substantially correct. It is undoubtedly true that official surveys are not open to collateral attack in an action at law. *Stoneroad v. Stoneroad*, 158 U. S. (39:966); *Russell v. Marcell Land Grant Co.*, 158 U. S. 253 (39:971). It is also true that the meander line is not a line of boundary, but one designed to point out the sinuosities of the bank of the stream, and as a means of ascertaining the quantity of land in the fraction which is to be paid for by the purchaser. *St. Paul & P. R. Co. v. Schurmeier*, 74 U. S. 7 Wall. 272 (19:74); *Hardin v. Jordan*, 140 U. S. 371, 380 (35:428). It is also true that metes and bounds in the description of premises control distances and quantities when there is any inconsistency between them. *Morrow v. Whitney*, 95 U. S. 551, 555 (24:456, 457).

But the question in this case is whether the boundary of these lots in the bayou or the main body of the river. That a water line runs along the course of a meander line cannot, of course, in the face of the plat and survey, be questioned, but

that the meander line of the plat is the water line of the bayou rather than that of the main body of the river, is evident from these facts. In the first place, the area of the lots is given, and when that area is stated to be 170 acres, it is obvious that no survey was intended of over 700 acres. In the second place, the meander line, as shown on the plat, is, so far as these lots are concerned, wholly within the east half of sections 23 and 26, while the water line of the main body of the river is a mile or a mile and a quarter west thereof, in Sections 22 and 27. Again, the distance from the east line of the section to the meander line is given, which is less than a quarter of a mile, while the distance from such east line to the main body of the river must be in the neighborhood of a mile and a half. Further, the description in the patents is of certain lots in Sections 23 and 26, and manifestly, that was not intended to include land in Sections 22 and 27.

These considerations are conclusive that the water line which was surveyed, and made the boundary of the lots, was the water line of the bayou or savannah, and there has been simply an omission to make any survey of the tract west of the bayou, and between it and the main body of the Indian River. It is unnecessary to speculate why it was that it was not surveyed. It may have been a mere oversight, or it may have been because the surveyors thought that the section of water would soon wash the low land away; but, whatever the reason, the fact is obvious that no survey was made of that body of land, and the boundary line fixed was the water line of the bayou.

The rule of public surveys, as prescribed by Chapter 9, Title 32, Revised Statutes, p. 438, and following pages, requires that they be surveyed into townships of six miles square, with subsequent sub-divisions into thirty-six sections of a mile square except where the line of Indian reservation or of tracts of land heretofore surveyed or patented, or the course of navigable rivers, renders this impracticable, with a proviso that 'in that case this rule must be departed from no further than such particular circumstances require.' Now, if this tract west of the bayou and between it and the Indian River was intended to be surveyed, obviously all of the lines of Sections 23 and 26 run have been run along straight lines, and so as to make complete sections and quarter sections. But such lines, at least those on the west side, were not run, and whatever the reason, the survey stopped at the water line of the bayou, and left this body of land west thereof wholly unsurveyed.

Although it was unsurveyed, it does not follow that a patent for the surveyed tract adjoining carries with it the land which perhaps ought to have been, but which was not in fact surveyed. The patent conveys only the land which is surveyed, and when it is clear from the plat and the surveys that the tract surveyed terminated, at a particular body of water, the patent carried no land beyond it. Cases of this nature are naturally few in number. *Lammers v. Nissen*, 4 Neb. 245, is somewhat in point. In that case it appeared that between the meander line as run and the Missouri River was a tract of several hundred acres, and the court held

that as that body of land had not been surveyed it did not pass by a patent of a lot which on the government plat extended to the meander line. A similar ruling was made in *Glenn v. Jeffrey*, 75 Iowa 20. *Whitney v. Detroit Lumber Co.*, 78 Wis. 240, was a case in which the meander line shown in government surveys was a half mile or more from the real borders of a lake, and the court in a very careful opinion, discusses the law of official surveys and holds that as the meander line was a mistake, the patent did not carry the land to the actual boundary of the lake, but only to the straight line which would have been the boundary of the quarter section if accurately surveyed. And the same doctrine is reaffirmed in *Lally v. Rossman*, 82 Wis. 147.

But is it said that because the water mentioned on the plat is called Indian River, the boundary must be taken as the water line of the river, and cannot be that of any intermediate bayou. *Bates v. Illinois Central Railroad Co.*, 66 U. S. 1 Black 204 (17: 158), is instructive upon this. In that case a patent had been granted for 102.29 acres lying north of the Chicago River, bounded by it on the south and by Lake Michigan on the east. The contention was that the main channel of the river entered the lake much below the line shown on the plat, and so the patent carried a larger tract than that described therein. It appeared that there were two channels of the river, and the court said in reference to this:

'The mouth of the river being found, established southeast corner of the tract. The plat of

the survey, and a call for the mouth of the river in the field notes, show that the survey made in 1821 recognized the entrance of the river into the lake through the sand bar in an almost direct line easterly, disregarding the channel west of the sand-bar, where the river most usually flowed before the piers were erected. It is immaterial where the most usual mouth of the river was in 1821; nor whether this northern mouth was occasional or the flow of the water only temporary at particular times, and this flow produced to some extent by artificial means, but a cut through the bar, leaving the water to wash out an enlarged channel in seasons of freshets. The public had the option to declare the true mouth of the river, for the purpose of a survey and sale of the public land.

So, in the case before us, obviously, the surveyors surveyed only to this bayou, and called that the river. The plaintiff has no right to challenge the correctness of their action, or claim that the bayou was not Indian River or a proper water line upon which to bound the lots."

In the case at bar, the facts have been established which bring it within the authority of *Horn v. Smith*. In that case the main question was whether it appeared that a mistake had been made by the surveyor, and if so, whether the cause of the mistake appeared, that is, to say whether the mistake was satisfactorily accounted for. In that case the fact that the evidence showed that there was a bayou corresponding with the meander line, was accepted as a satisfactory and conclusive explanation.

I submit the court has found by the opinion a state of facts equally well accounting for the mistake made by the surveyors who meandered Walker's Lake. The opinion says:

"The surveyors made mistakes in delimiting the boundary lines of the lake, and included a large amount of low land which the waters of the lake did not cover. These mistakes were not unreasonable ones, and do not demonstrate either fraud or gross carelessness on the part of the surveyors, *for the evidence shows that there may have been grounds at that time to believe that the meander line followed the bank of the lake. There was a slash or low place along the meander line, and as this may have been covered by water at the time, the surveyors followed its outer line, believing it to be the shore line of the lake*" (Tr. 114).

In the case of *Horn v. Smith*, the surveyors thought they were meandering a small river, and the mistake which the court found they made consisted in mistaking a bayou for the river. Is not a slash or slough filled with water as much like a lake as a bayou like a river? Certainly one is as much a body of water as is the other. All that the court in *Horn v. Smith* thought was necessary was for the facts to reasonably well establish that there was a body of water coinciding with the meander line. And this appearing the court said it was more reasonable to believe that the surveyors meandered such body of water than to say that they intended to leave unsurveyed 1,000 or 1,200 acres of land.

In order to show that the Supreme Court was of opinion that all that was necessary to create an exception to the general rule was for the evidence to show that the situation was such as to make the surveyor believe he was meandering a body of water, I call attention to the fact that the opinion says the surveyors came to a "bayou" or "savannah," and mistook this for a river. A savannah is a swampy, low place. The use of the word "savannah" as an alternative term shows that no stress was being laid on the fact that a bayou was very similar to a river. But there is more similarity between a lake and a slash filled with water than there is between a river and a bayou, or a river and a savannah. After all, what this case decides is that in the opinion of the court, the question was to get at what was the act of the surveyors. Was it their purpose and intention to meander what they found, believing it to be what they called it—thus clearly making a mistake—or was their act the result of *an examination of all the territory* between the meander line and the real lake or river, and the conclusion on their part that it was all lake?

In the case at bar the whole record abounded in evidence regarding the existence of the slough at the point where the meander line was run (Tr. 20, 23, 32, 36, 39, 40, 47, 49, 59, 60, 61).

The testimony shows this slash to have extended all around the northern and eastern sides of the lake, and to have existed at every point where the surveyor's field notes show him to have approached the situation. The field notes show that he surveyed the west side of the

lake first. There he found considerable water. Then he started from a point considerably east of the eastern meander line, and proceeded due west until he struck this slash, and it looking like a lake and being immediately opposite to what he had already found to be a lake, he fell into the error of assuming that he had located the eastern side of a lake.

There is in the present case much more direct proof, and more circumstantial evidence, to establish a body of water at the point of the meander line than there was in the case of *Horn v. Smith*. In that case Mr. Justice Brewer summed up the situation by saying:

"But the question in this case is whether the boundary of these lots is the bayou or the main body of the river. That a water line ran along the course of the meander line cannot, of course, in the face of the plat and survey, be questioned, but that the meander line of the plat is the water line of the bayou rather than that of the main body of the river, is evident from these facts."

The two cases are so identical that all that is necessary to make the rulings identical is for the court to hold that it is evident that the water line meandered was the line of the slash, which it has already found existed, rather than the line of the lake.

We have in the present case also the same conditions as to quantity of land contained in the territory between the meandered line and the lake. This was an important feature in the case of *Horn v. Smith*, and is emphasized in the opinion. Says the court:

"In the first place the area of the lots is given, and when that area is stated to be 170 acres, it is obvious that no survey was intended of over 700 acres."

In the same connection, in the opinion, attention is called to the fact that the meander line is so far from the lake that it is in different sections. The same facts apply in the case at bar. The discrepancy in acreage between the land owned by defendants and the 1,200 acres which they are claiming is equally as great as it was in the Horn case.

Another well established exception to the general rule that official plates and surveys are conclusive, and that meander lines are not lines of boundary, arises when the facts show that there never was a lake, or stream, such as the surveyors undertook to meander, or if there was any lake or stream, its actual location was such that it would not be reached by extending the lines of the sections which had been platted and surveyed as fractional sections on the meandered line.

French-Glen Live Stock Co. v. Springer, 185 U. S. 47.

In the above case the opinion was delivered by Mr. Justice Shiras. I quote in part (italics are mine):

"If, indeed, there had been a lake in front of these lots at the time of the survey, which lake had subsequently receded from the *platted* meandered line, the claim of the owner of the lots at the time of the survey, to the increment thus occasioned,

might be conceded to be good, if such were the law of the State in which the lands were situated. But if there never was a lake—no water forming an actual and visible boundary—on the north end of the lots, *it would seem unreasonable to prolong the side lines of the survey indefinitely until a lake should be found.* The jury having found that the facts under this issue were as claimed by defendants in error, the conclusion *must* be that the rights of the plaintiff in error must be regarded as existing *within the actual lines of the survey*, and to the extent of the acreage called for in the patents, and the meander line was intended to be the *boundary line of the fractional sections.*"

It may be claimed that the above case holds that the meander line must be considered a line of boundary *only where the facts show that no lake could be reached by any extension, however prolonged, of the section lines.* The only language in the opinion which gives rise to any such suggestion is to be found in the last paragraph:

"For reasons already given we think that, while the plats are conclusive as to the meander line, *and while if there was a lake abutting on or to the north of the lots, the plaintiff in error would take all the land between the meander line and the water, and all accretions, it was competent for the defendants to show that there was not, at the time of the survey, nor since, any such lake, and to contend that in such a state of facts there could be no intervening land, and no accretions by reliction.*"

This language cannot be construed to mean that the defendants were limited to the contention that "there was not any such lake" as Malheur Lake, because, to put such a construction on the language would be inconsistent with the whole opinion. It was admitted by the defendants, and by the opinion it was found, that Malheur Lake did exist. It was said:

"The fact of the existence of Malheur Lake, a non-navigable body of water, was admitted, but there was evidence to show it lies to the northeast of the lots of plaintiff" (p. 53).

I submit that what the court held in the above case was that it was sufficient if the claimant of the unsurveyed lands showed that there was no lake *in front of* the fractional sections, lying within a *reasonable* distance thereof.

This idea is plainly evident in the opinion of the Supreme Court of Oregon, rendered in the case, and which this court quotes with approval. It said:

"If there never was a lake *in front of* plaintiff's lots, or, if one did not exist *there* at the time of the survey, then there was no natural object or monument marking the *north boundary of said lots*; hence resort must be had to the secondary evidence, viz. the courses and distances which are ascertainable from the plats and surveys, and they must prevail. The result is natural and the land conveyed would be just what a mathematical calculation would produce from the field notes of the survey of the fractional sections and the supposed meander

line. * * * The plaintiff sought to sustain the fact of the actual existence of the lake in front of its lots and *upon which they abutted* at the time of the survey" (p. 53).

Then Mr. Justice Shiras, following up this idea, says in his opinion:

"But if there never was such a lake, no water forming an *actual and visible boundary*—on the north end of the lots—it would seem unreasonable to prolong the side lines of the survey indefinitely until a lake should be found."

It seems perfectly clear that the learned judge is speaking about a lake forming an *actual and visible boundary*, and he does not say a lake somewhere north of the lots, but he says "*on the north end of the lots.*"

In the case at bar the court has adjudged that if there was any Walker's Lake it was a mile west of the defendant's fractional sections. To reach it would, I submit, require an "indefinite" prolonging of the lines of the survey, just what this court says would seem unreasonable.

I submit that without going further, the case of *French-Glenn Live Stock Co. v. Springer* ought to be considered a controlling authority on this question.

But plaintiff's theory has always been that there never existed any lake at all; that the meandering of any lake was a mistake of the surveyors, and that all of the land embraced in the meander lines of Walker's Lake was swamp and overflowed land and none of it lake.

There is not a word in plaintiff's bill which intimates an admission that there ever existed any such lake. It is stated that defendants claim that there is such a lake, and that at the time of the survey their fractional sections abutted upon it.

There was, at the time of Newsoms' survey, a body of water west of the *locus in quo*, and on his map he locates it. The proof shows that at that point the land is lower, and the rain water remains on it longer, but it also shows that even that supposed lake entirely dries up at times, and that it is not, and never was, entitled to be considered such a body of water as would not pass in its entirety under the swamp land act (Tr. 26).

Defendants took no testimony whatever to establish the existence of any lake west of the land in controversy. They contented themselves with taking proof upon the proposition that *the land in controversy was in 1847 lake bed*. That was the only question in controversy, as they saw it. And as I have already stated, it was by both sides understood that upon the determination of that one question defendants based their claims. The stipulation shows that it was intended to eliminate every other question, and that part of the stipulation which provides that the land in controversy passed to the Levee District from the state under the grant of 1893, unless because of riparian rights acquired by defendants, plainly indicates that it referred to riparian rights arising from the fact that defendant's sections abutted a lake in 1847, and not from any fiction of the law to the effect that

the section lines should be considered as indefinitely extended for a mile until a lake might be found.

But even under this fictitious doctrine the proof must establish the existence of a lake. All the proof tends to establish the contrary, and if the question rested here, the plaintiff has made out her case, because defendants by the stipulation agree that they acquired no title from the state to the lands, unless under riparian rights.

But the plaintiff need not rest the proposition of whether there was any lake upon the proof of witnesses; the defendants have by the stipulation agreed that the territory meandered as "Walker's Lake" was not a lake, but was swamp and overflowed land.

Under the Act of Congress of 1850, granting to the State of Arkansas all the swamp and overflowed land, it was provided how the nature of the land should be determined.

"It shall be the duty of the Secretary of the Interior to make accurate lists and plats of all such lands, and transmit the same to the Governors of the several States in which such lands may lie, and at the request of the Governor of any State in which said swamp and overflowed land may be to cause patents to be issued to said State therefor, conveying to said State the fee simple of said lands" (6 Fed. Stat. Ann. p. 404).

The effect of this statute was to devolve upon the Secretary of the Interior the duty, and confer upon him the power, of determining what lands were swamp and

overflowed lands, and to make his office the tribunal whose decisions were to be controlling. And except in cases where he fails or refuses to act, his jurisdiction is exclusive.

In *Smith v. Hollis*, 46 Ark. 17, it is said:

"The power making the grant could impose its own conditions. It constituted the Secretary of the Interior the judge of the lands in the State coming within the meaning of the grant, and his decision on this point in the absence of fraud or imposition should be considered as final in all courts."

Morgan v. R. R. Co., 63 Mo. 129.

Stephenson v. Stephenson, 71 Mo. 127.

Carroll v. United States, 154 Fed. 425.

Oyden v. Buckley, 116 Iowa, 353 (89 N. W. 1115).

Let me now here again quote part of the stipulation in this case:

"It is agreed * * * that the townships including Walker's Lake, as meandered on the map, were included by the Secretary of the Interior of the United States Government, in the list of lands prepared by him and forwarded by him to the Governor of Arkansas, showing the lands which passed to the State under the grant of 1850, and that said lands embraced in said list were subsequently covered by patents from the Government of the United States" (Tr. 15, 16).

If this stipulation means anything, it certainly fixes the fact that Walker's Lake as meandered on the map (the water which the surveyor supposed to be a lake)

was by the Secretary of the Interior adjudged *not to be* a lake, but was adjudged to be swamp and overflowed land. It was so selected, listed, accepted and patented. The decision was final, according to all the authorities. It is a determination of the nature of the so-called Walker's Lake, as of date 1850, for the Secretary was determining what land passed *as of that date*. It is therefore an adjudication by the official having exclusive jurisdiction, that in 1850 the meandered Walker's Lake was not a lake, but was swamp land and overflowed land passing under the grant. There is no escape from this conclusion. The stipulation is absolutely free from ambiguity.

The selection as swamp and overflowed land of the two townships including Walker's Lake *as meandered on the map*, necessarily means that Walker's Lake *as meandered* on the map, was selected and listed. And it is significant to notice that the language was not that Walker's Lake was selected, but Walker's Lake *as meandered* on the map. This language merely designates a territory, and is not descriptive of Walker's Lake in any sense.

How, then, can defendants be heard to assert that there was a lake in front of their fractional sections? If there was none, then the case of *French-Glenn Live Stock Co. v. Springer* (*supra*) is conclusive of the question of their riparian rights and fixes the meandered line as a boundary line. The line being a boundary, under the rule as stated in *Horn v. Smith* (*supra*) nothing passed by riparian right from the Government to the State, nor

from the State to its vendees, but this in no way interfered with the title passing to the State, under the swamp land act, and the patents for the townships.

2nd.

It having been established that all of the two townships passed out of the government of the United States to the State of Arkansas, we are beyond and passed all questions which might be based upon the idea of government ownership. Therefore, no question can in any way arise regarding defendants' riparian rights, that is not determinable as a question of Arkansas law. If all of the two townships passed to the State, it was, at once, the owner of the fractional sections and the unsurveyed lands. What riparian rights were acquired by defendants as the vendees of the State when they acquired the fractional sections is a question of local law.

Barney v. Keokuk, 94 U. S. 324-328.

Hardin v. Shedd, 190 U. S. 508.

Whittaker v. McBride, 197 U. S. 510.

Mitchell v. Smale, 140 U. S. 406.

Assuming, then, that the townships were selected and patented as being swamp and overflowed land in 1850, and properly passed from the Government of the United States to the State of Arkansas, what was the law of Arkansas regarding the sale of public lands and incidental riparian rights?

Even upon the assumption that there was a lake, and that the fractional sections conveyed by the State abutted upon it, the purchasers of those sections would only have

acquired what they paid for per acre. No Arkansas official at any time, has ever had power to convey public land except by the acre. The statutory power for disposing of swamp lands has always been a limited power of sale at a fixed price.

No Auditor, Governor or Land Commissioner ever undertook to sell any of the so-called lake beds. They were not admeasured, and these officials had power to sell only by the public surveys and by the acre.

As was said by the Supreme Court of Indiana in *State v. Portsmouth Sav. Bank*, 7 N. E. 379:

"Public officers have no authority to dispose of the State lands, except such as is conferred upon them by positive statute. The State officers having no authority to sell Beaver Lake directly, the same being unsurveyed land and unplatted, *could not do it indirectly by selling the border lands, which were surveyed and platted*" (Citing authorities).

But it is said in the opinion that if the State got title to the lake bed from the Government, the purchasers of the abutting fractional sections from the State got the lake bed also.

This does not follow. As we have seen, the State took under patents conveying the whole of two townships. For its ownership it did not depend in any sense upon any riparian rights. It took the two townships as swamp and overflowed land, under the adjudication and determination of the Secretary of the Interior that they

were swamp and overflowed lands in 1850. The State took all.

But what the State's vendees took is wholly another question. As we have seen, the question of whether or not there existed any lake when the State conveyed was not a question to be considered. If the State, and all persons, would have been bound by the official survey and plat, even that was out of the way, because the Land Department, which had had the survey and plat made, had already determined that its showing was erroneous insofar as it showed a lake, and the Secretary of the Interior had pronounced the so-called lake bed to be swamp land. This finding was conclusive.

Western & Hawaiian Inv. Co. v. Farmers & T. Nat. Bank (Oregon), 57 Pac. 912, was a case with facts exactly similar to the case at bar. The court said:

"The averment of the answer is that the lands described in the defendant's said mortgage border upon and lie in what is known and platted upon the said surveys as Tule Lake, and the borders of said lake were in said surveys meandered by the U. S. Surveyor, and the meander line of said lake, as shown by the field notes and plat of said survey on file in the U. S. land office and in the office of the Surveyor General of Oregon, were and are as follows:

In view of the contention of the parties and of the real issue sought to be litigated, this averment ought not to be construed as an allegation that what was known and platted upon the public survey as 'Tule Lake' was or is a body of water.

It is not so stated, and the mere fact that it was meandered is by no means conclusive on that point. (*Grant v. Hemphill*, 59 N. W. 263). But conceding the pleadings to be sufficient, the only evidence on the question is a copy of the plat of the public survey, which shows that a certain portion of the township was not sectionized, but meandered and designated as "Tule Lake," and the stipulation that the Land Department of the general Government has held the portion so designated to be swamp and overflowed land granted to the State by the Act of March 12, 1850. Any claim that can be made for the plat as *prima facie* evidence is manifestly overcome by the ruling of the Land Department that the disputed tract was in fact swamp and overflowed land."

Therefore, all presumption being out of the way, and being helped out by no official maps or survey, but on the other hand, confronted by the official action of the Secretary of the Interior, and without any proof, what is defendants' position on this record?

The Supreme Court of Arkansas has found that they abutted no lake in 1847. The Secretary of the Interior has brushed away the effect and force of the Government plat and survey, which alone induced the Supreme Court to adjudge the existence of riparian rights in defendants. Defendants are therefore in the attitude of claiming no interest in the land in question, except as the result of the operation of the law regarding riparian rights, without any lake, actual or fictitious, upon which their lands might have abutted.

For its local law, the State of Arkansas has adopted the rule that riparian ownership results only to the owner of land actually abutting on a body of water, a lake or a river. As to whether such rights become vested while the lake bed is covered with water and extend to the center, or only after there has been a gradual and imperceptible rescission of the waters, are questions about which there seems to be dispute. My own opinion is that *Warren v. Chambers*, 25 Ark. 120, and *Rhodes v. Cissell*, 82 Ark. 367, clearly announce the latter view of the question.

Conclusion.

If I have succeeded in my effort to establish the errors complained of in the decision made in this case by the Supreme Court of Arkansas, and this court is prepared to reverse the decree which has been pronounced, then it will be gratifying to this court to know that the Supreme Court of Arkansas has itself in effect overruled its opinion in this cause in a well considered opinion delivered by Mr. Justice Kirby in 1911, in *Chapman & Deavey Lumber Co. v. Board of Directors of St. Francis Levee District*, 100 Ark. 94.

In that case there was involved exactly the same proposition in regard to the proper construction to be given to a patent of the United States Government conveying land by townships where there was within the townships unsurveyed land. The Supreme Court of Arkansas held that all of the townships passed under

the grant of 1850, and under the patents subsequently issued to the State of Arkansas.

That case was so exactly like the case at bar that the attorneys who represented the complainants (occupying the position of defendants here) relied before the Supreme Court of Arkansas entirely upon the case of *Little v. Williams*. But the Supreme Court of Arkansas decided the case exactly opposite from its decision in the case of *Little v. Williams*, thereby practically overruling its opinion in this case, although it did not do so in terms. That it did so in effect is strongly shown by the dissenting opinion of Mr. Chief Justice McCullough which is as follows:

"The facts of this case bring it, according to my views, within the rules of law announced in *Little v. Williams*, 88 Ark. 37, and I think that case should control. The court has, in attempting to distinguish the two cases, made a distinction without a substantial difference, and, much as I dislike to see decisions overruled which constitute rules of property, it seems to me that it would have been infinitely better to overrule the former decision than to leave the law in hopeless uncertainty by adopting a line of distinction which is too fragile to serve as a guide in the future.

The first point of distinction sought to be made is that in *Little v. Williams* the *locus in quo* has been designated on the plat of the public survey as a lake, and in the present case it was designated as 'Sunk Lands.' In each instance it was unsurveyed, as indicated by the plat and on the field notes. It is manifest that the surveyors in marking the words

'Sunk Lands' meant to designate a body of water. A careful study of the field notes makes it plain that such was the intention, and the history of those formations caused by the earthquake of 1811-12 confirms it. Lands which were sunken by that great convulsion of nature became of course, covered by water and constituted lakes, though sometimes designated by the other name to indicate the method of formation.

If the words of designation 'Sunk Lands' meant a body of water, it was the same as if marked lake, and falls squarely within the doctrine of *Little v. Williams*.

The distinction sought to be made as to the question of conveyance by townships is, I think, equally untenable. The only difference is that in *Little v. Williams* the unsurveyed *locus in quo* indented the outer boundaries of the township, while in the present case it runs through the township. The point of the decision in *Little v. Williams* was that a description by reference to the plat of a township conveyed only the surveyed land in the township. The views now expressed by the majority entirely disregard the effect of the former decision, and, I think, necessarily overrule it."

*Chapman & Dewey Lumber Co. v. Board of
Directors of St. Francis Levee District,*
100 Ark. 94.

Respectfully submitted,

Key

Attorney for Plaintiff in Error.

LITTLE v. WILLIAMS.

ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

No. 8. Submitted October 30, 1913.—Decided December 1, 1913.

In this case, *held* that the interpretation by the State Court of a stipulation of counsel was not open to review in this court as not raising any Federal question although there were Federal questions involved in the case.

The Swamp-Land Act of September 28, 1850, c. 84, 9 Stat. 919, did not in itself operate to invest the States with swamp and overflowed lands. While the act was a grant *in presenti* and gave an inchoate title, identification and patent were necessary to vest fee simple title in the State.

A duly legalized agreement between a State and the United States that the former accepts lands theretofore patented to it under the Swamp-Land Act as its full measure of land due thereunder extinguishes whatever inchoate title it or any of its political subdivisions may have in any swamp lands not already patented to it.

A levee district is a mere political subdivision of the State creating it and is bound by the action of the State; and *so held* that a relinquishment by the State of Arkansas of all lands in which it had merely an inchoate title under the Swamp-Land Act operated also to relinquish

Opinion of the Court.

231 U. S.

the title thereto of the levee districts to which the State had previously conveyed such lands. *Rogers Locomotive Works v. Emigrant Company*, 164 U. S. 559.
88 Arkansas, 37, affirmed.

THE facts, which involve the construction of the Swamp-land Act of 1850 and the title to certain lands in Arkansas, are stated in the opinion.

Mr. Henry Craft for plaintiff in error.

No counsel appeared for defendants in error.

Mr. Solicitor General Davis for the United States as *amicus curia*.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This was a suit to quiet the title to about 1,200 acres of land in Mississippi County, in the State of Arkansas, lying within the meander line of what was represented on the plats of the United States survey as Walker's lake. The plaintiff claimed title through (a) the act of Congress of September 28, 1850, 9 Stat. 519, c. 84, granting swamp and overflowed lands to the State, (b) an act of the state legislature in 1893 (Laws Ark. 1893, p. 172) granting to the St. Francis Levee District "all the lands of this State" lying within that district, and (c) a deed of March 11, 1903, from the levee district to the plaintiff. The defendants, in addition to denying the plaintiff's title, asserted title in themselves in virtue of their ownership, under swamp-land patents from the United States to the State and from the State to their grantors, of fractional sections abutting on the meander line of the lake. After a trial, the chancery court of the county entered a decree dismissing the complaint on the merits, and the decree was affirmed by the Supreme Court of the State. 88 Arkansas, 37.

231 U. S.

Opinion of the Court.

The material facts, due regard being had for the findings of the Supreme Court, are these: The lands in the vicinity of Walker's lake were surveyed, in 1847, into two fractional townships, made so by meandering and excluding what the surveyor designated as the lake; but the meander line, instead of approximately following the margin of the actual lake, a small non-navigable body of water, was run about a mile distant therefrom, along a slash or slough which the surveyor probably mistook for the outer portion of the lake. The land in controversy, although then wet and swampy, as were also the lands outside the meander line, was not part of the bed of the lake, but lay between its bank, which was well defined, and the meander line. After the enactment of the Swamp-Land Act, the surveyed lands in the two townships were listed by the Secretary of the Interior as swamp lands and were patented to the State under that act, and the fractional sections abutting on the meander line and opposite the land in controversy were then patented by the State to the defendants' grantors. The unsurveyed land within the meander line was never selected by the State, or listed by the Secretary of the Interior, as swamp or overflowed land; nor was it ever patented to the State.

As part of a compromise and settlement between the State and the United States, negotiated in 1895 and approved by the state legislature in 1897 and by Congress in 1898, the State, subject to certain exceptions not here material, accepted the lands theretofore patented, approved or confirmed to it under the Swamp-Land Act as the full measure of lands due to it thereunder, and relinquished to the United States all other claims or demands, adjusted or unadjusted, growing out of that act. Senate Report No. 76, 54th Cong., 1st Sess.; Laws Ark., 1897, p. 88; 30 Stat. 367, c. 229.

In disposing of the case the Supreme Court of the State, after observing that the plaintiff must recover, if

at all, upon the strength of her own title, and not upon the weakness of that of her adversaries, held (a) that, as the land in controversy had not been selected, listed or patented as swamp or overflowed land under the Swamp-Land Act, the title thereto remained in the United States, unless it had passed to the State as a riparian owner in virtue of the patents for the adjoining fractional sections; (b) that if the title had so passed to the State it in like manner had passed thence with those sections to the defendants' grantors prior to the grant of 1893 to the levee district; and (c) that in view of the State's relinquishment under the compromise and settlement of 1895, the plaintiff, as a subsequent vendee of the district, was not in a position to question the riparian rights asserted by the defendants.

In the chancery court it was stipulated by counsel, for the purpose of avoiding the production of other evidence upon the subject, that "the townships including Walker's lake, as meandered on the map," were listed by the Secretary of the Interior as swamp lands and patented to the State under the Swamp-Land Act, and one of the controverted questions in the Supreme Court was whether this stipulation, rightly interpreted, meant that the listing and patenting embraced all the lands which would have been within the two townships if the township and subdivisional lines had been extended over the area represented on the plat as the lake, or only the surveyed lands, that is, those lying without the meander line. The court, having recourse to the plats of the survey as produced in evidence (which represented the townships as fractional by reason of the exclusion of the meandered area from the survey), as also to the Government's well known practice of patenting lands according to the legal subdivisions shown upon the plats, held that the stipulation should be taken as referring to the fractional townships, and not to the unsurveyed lands within the meander line; and in

231 U. S.

Opinion of the Court.

that connection it was said: "It is evident that the parties meant only the surveyed lands appearing on the plat, leaving all questions as to the character of the unsurveyed territory and title thereto open to further proof and adjudication." This is assigned as error, but as no Federal question was involved, but only the proper interpretation of a stipulation of counsel, the ruling is not open to review by this court. It is not as if the patents had been in evidence and the question had been one of their interpretation or legal import. See *French-Glenn Live Stock Co. v. Springer*, 185 U. S. 47, 54.

In view of the finding that the land in controversy was never patented to the State, it will be perceived that a pivotal question in the case is, whether the Swamp-Land Act of 1850 in itself operated to invest the State with the title in any such sense as to be of present avail to the plaintiff. The state court answered the question in the negative, and the correctness of that ruling is now to be passed upon.

Although the terms of the first section of the act denote a present grant to the State of the "swamp and overflowed lands, made unfit thereby for cultivation," the second section lays upon the Secretary of the Interior the duty of identifying and listing the lands coming within the terms of the grant and of causing patents therefor to be issued to the State "at the request of" its Governor, and then declares: "and on that patent the fee simple to said lands shall vest in the said State," subject to the disposal of its legislature. It became necessary, in *Rogers Locomotive Works v. Emigrant Company*, 164 U. S. 559, to determine the meaning and effect of the act in the light of these provisions and of prior decisions, and it was there said (p. 570): "While, therefore, as held in many cases, the act of 1850 was *in præsenti*, and gave an inchoate title, the lands needed to be identified as lands that passed under the act; which being done, and not before, the title

became perfect as of the date of the granting act." And again (p. 574): "It belonged to him [the Secretary of the Interior], primarily, to identify all lands that were to go to the State under the act of 1850. When he made such identification, then, and not before, the State was entitled to a patent, and 'on such patent' the fee simple title vested in the State. The State's title was at the outset an inchoate one, and did not become perfect, as of the date of the act, until a patent was issued." What was there said has since been regarded as the settled law upon the subject. *Michigan Land & Lumber Co. v. Rust*, 168 U. S. 589, 592; *Brown v. Hitchcock*, 173 U. S. 473, 476; *Niles v. Cedar Point Club*, 175 U. S. 300, 308; *Ogden v. Buckley*, 116 Iowa, 352; *Birch v. Gillis*, 67 Missouri, 102; *Carr v. Moore*, 119 Iowa, 152, 159.

As this land was never so identified, and, so far as appears, its identification was never even requested by the State, it follows that, even if at the date of the act the land was in fact swamp or overflowed, the State never acquired more than an inchoate title to it, a claim which was imperfect both at law and in equity.

We have seen that by the compromise and settlement of 1895, which was approved by the state legislature and by Congress, the State accepted the lands theretofore patented, approved or confirmed to it under the Swamp-Land Act as the full measure of lands due to it thereunder, and relinquished to the United States all other claims or demands, adjusted or unadjusted, growing out of that act. Without any doubt this extinguished the State's inchoate title and estopped the State from thereafter asserting that title or demanding a patent.

Assuming that the inchoate title had then passed to the levee district under the act of 1893, was the district in any better situation than the State? The answer turns upon the relation of the one to the other. The district was a mere political subdivision of the State, created by the

231 U. S.

Syllabus.

latter, and invested with authority to construct and maintain levees to protect lands within its limits from overflow by the waters of the Mississippi River, and to levy and collect taxes and take other measures to that end. Laws Ark., 1893, pp. 24, 119. It was essentially a subordinate agency of the State, was exercising a power of the State for its convenience, could have no will contrary to the will of the State, held its property and revenue for public purposes, and was in all respects subject to the State's paramount authority. In view of this relation, we are quite clear that the State's action was binding upon the district, and that the latter could not by its subsequent deed to the plaintiff invest her with a title which it no longer possessed. In this respect the case is not distinguishable from *Rogers Locomotive Works v. Emigrant Company*, 164 U. S. 559, 576, 577.

We conclude, therefore, that the plaintiff was without title and could not maintain the suit. This renders it unnecessary to consider whether, in point of Federal law, the riparian rights asserted by the defendants are ill or well founded.

Decree affirmed.
